

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

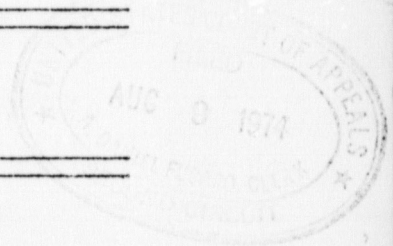
THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-
CARMINE TRAMUNTI, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. T(10) - Pages 1288 to 1508

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2 UNITED STATES OF AMERICA

3 vs.

4 CARMINE TRAMUNTI, et al.

5

New York, February 8, 1974

6

10:00 a.m.

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8 Trial resumed.

9

10

11 (In the robing room.)

12 THE COURT: Good morning.

13 MR. ELLIS: Judge, I am here to ask your
14 Honor for a ruling pursuant to Puco as to whether the
15 government would be allowed to cross examine Mamone on
16 his criminal record in the event he takes the stand.

17 I believe that his criminal record consists of a 1957 police
18 arrest in New York State, for which he received a
19 suspended sentence, a 1959 possession of narcotics arrest
20 by the state and a federal narcotics arrest that same year,
21 1959, the point being, your Honor, that these arrests
22 and convictions are too remote to be relevant in this
23 case.

24 THE COURT: I knew what the point was.
25 Let me go back and read Puco. I will admit that I

1 jha2

2 don't have all these cases right on the top of my head.

3 MR. CURRAN: Your Honor, so that the record
4 is clear, I don't have the exemplified copy with me, but
5 the narcotics arrest resulted in a narcotics conviction
6 of Mr. Mamone. In other words, when Mr. Ellis talked
7 about an arrest, there was a conviction, and I believe
8 he received an indefinite term as a result of that con-
9 viction.

10 MR. ELLIS: I don't mean to be misleading.
11 Both narcotics arrests resulted in convictions. He
12 was sentenced to zero to five on one and zero to six
13 on the other and he served them concurrently.

14 THE COURT: All right.

15 MR. PHILLIPS: They were 1959, I think.

16 MR. ELLIS: One was April, 1959, one
17 was May, 1959.

18 THE COURT: Let me read the case.

19 By the way, has there been an information filed
20 as a second offender.

21 MR. ENGEL: Against whom?

22 MR. PHILLIPS: Mr. Mamone.

23 MR. ENGEL: I think so.

24 MR. ELLIS: He was a youthful offender.
25 He was 17 years old.

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2 MR. PHILLIPS: I don't think he was charged
3 as a youthful offender, Mr. Ellis. If he was charged
4 as a youthful offender the government would concede that
5 the prior conviction could not be used to impeach him.
6 It is our position he was not charged as a youthful offender,
7 but was charged as an adult and was convicted as an adult.

8 THE COURT: Get me a copy of the conviction.
9 How can I rule on it unless I know?

10 All right. The record should reflect that
11 Mr. Ellis left the room.

12 Mr. Panzer now would like to argue on his
13 motion to suppress a certain photograph.

14 MR. PANZER: Your Honor, I think the
15 government's memorandum reflects pretty much what the
16 issues are and I think the case that I gave your Honor
17 and the case that the government supplied also reflect
18 the issue. Not to belabor the point, I would just
19 like to point something out to your Honor.

20 On the transcript, starting on page 1039, and
21 that is where Nolan is giving her her rights when he is
22 on 57th Street, and this is about four hours after she
23 has been arrested and she is interrogated again, nowhere
24 is it indicated in this transcript, and that was my
25 recollection of the hearing, that she said she under-

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stood her rights after he gets all through. Then

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he continues to question her about different things

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and she answers questions and eventually we get to this

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piece of paper and then she starts to cry.

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I say that since there was no clear understanding of her rights at that point that there should not have

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been any questioning at all. Even if we go back to

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the prior warning that was given when she was arrested

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in the apartment, I believe Agent Maguire admitted on cross

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that she was confused, that she had been crying.

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13

I think for these reasons the leads that they got from questioning her which led them to go to 225th

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Street should be suppressed. I think that is basic.

15

16

THE COURT: It is kind of the fruit of the forbidden tree from that point on, is that it?

17

MR. PANZER: Yes.

18

19

MR. FORTUIN: Just responding to that point,

20

I think the evidence is clear that the warnings were completely adequate. Maguire testified she was con-

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fused at the time of her arrest, but there was no indica-

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tion she was confused when she got the warning. In fact,

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he testified that she gave some affirmative consent each

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time. She was then warned a second time when she got

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down to the station.

1 jha
2 So she was warned fully on two different occa-
3 sions and I heard no evidence that she was so confused
4 that she couldn't understand. . . She was confused at the
5 time she was arrested, but I heard no evidence that she
6 was confused at the time of these warnings.

7 MR. PANZER: Except, as I pointed out, the
8 second time there is no indication in the record that she
9 understood or that she answered in the affirmative when
10 she was warned.

11 MR. ENGELS: Further, on page 1039, your
12 Honor, the agent, Agent Nolan, said that he explained to
13 her, "Well, if you don't want to talk to me you don't
14 have to." Then he began to ask her the questions on
15 the personal history sheet, which is in the transcript,
16 his questions as to her name, address and so forth, and
17 he had made it clear that if she did not want to answer
18 any of those questions she did not have to. He
19 then asked her about her relatives, which is how Basil
20 through Estelle Hansen became part of the case.

21 THE COURT: All right.

22 MR. FORTUIN: The other issues we have briefed
23 and I see no point in arguing.

24 THE COURT: No, I don't either. I have
25 read your brief. I also read your cases.

1 I think that you are entitled, however, to
2 something in writing. Believe it or not, it firms
3 up in my own mind by writing it out and putting it down
4 in logical steps. I have not made up my mind, if that
5 is what your question is. I want to do it my way.
6 You will get something most likely Monday, Monday afternoon.

7 All right, gentlemen. Thank you very much.

8 MR. PANZER: Thank you, your Honor.

9 (In open court; jury not present.)

10 THE COURT: Mr. Fisher, there was some indi-
11 cation yesterday that you were going to subpoena some
12 people here. Did you for this time?

13 MR. FISHER: If your Honor please, Mr.
14 Phillips called Sergeant O'Boyle, who will be in court
15 at 10 o'clock.

16 THE COURT: Is there anybody else?

17 MR. FISHER: No, your Honor. I am advised
18 that Mr. Miller has returned today and I believe he has,
19 believe it or not, your Honor, transcripts of tapes.

20 THE COURT: Aren't you happy?

21 MR. FISHER: Mr. Miller? What happened
22 to Mr. Miller?

23 There he is.

24 THE COURT: Mr. Miller, could you come back
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at 12:30?

MR. MILLER: Yes, I can.

THE COURT: I would like to get the trial
part of this under way and then we will take up the
applications during the lunch break.

MR. MILLER: That is fine, your Honor.

1 bpl

12 2 MR. DOWD: Your Honor, at this time I would like
3 to request any further 3500 material with respect to John
4 Barnaba since it was apparent at 5.30 last night that
5 the government intends to introduce now evidence in
6 respect to three alleged sales involving my client,
7 John Barnaba and Albert Cassella in January, 1973, and
8 although Mr. Phillips represented that Mr. Barnaba on
9 his direct examination would not testify to that, he
10 was the one wearing the Kel transmitter, at the time he
11 was an integral participant in this, and I think that
12 therefore concerns this case, and I think he testified
13 before a grand jury, although I am not sure, about those
14 three sales, and I think that on that basis that that
15 would be information concerning this case, that I would
16 be entitled to such material, and nobody has received
17 anything concerning those three sales.

18 THE COURT: All right. You will get it as
19 soon as Barnaba finishes testifying.

20 All right. We are all set. Bring in the jury.

21 (Jury present.)

22 THE COURT: Bring the witness in, please.

23 Good morning, ladies and gentlemen.
24
25

1 hp2

2 J O H N B A R N A B A, resumed.

3 THE COURT: Proceed, Mr. Curran.

4 Mr. Barnaba, you remember you were placed under
5 oath yesterday. That oath continues today.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. CURRAN:

8 Q Mr. Barnaba, I think you last testified yester-
9 day afternoon that you had a conversation with the
10 defendant Inglese and you had given him some moneys?

11 A Yes, sir.

12 Q After that happened what did you do next?

13 A I went back to the animal hospital, to Richie.

14 Q What happened at the animal hospital?

15 A I got my money from Richie.

16 Q How much money did Richie give you?

17 A A thousand dollars.

18 Q What kind of bills?

19 A Small bills.

20 Q Did you then leave the hospital?

21 A Yes.

22 Q Was there any further conversation with Richard
23 Forbrick at that time, Mr. Barnaba?

24 A Not that I recall, no.

25 Q Directing your attention to a short time later,

1 hp3 Barnaba-direct.

2 in about the month of September of 1970, did you again see
3 Richard Forbrick?

4 A Yes, I did.

5 Q How did that come about?

6 A He called me on the phone.

7 Q At your home?

8 A Yes. Told me to go over.

9 Q He asked you to do what?

10 A To go over, that he wanted to see me.

11 Q When you say go over, go over where?

12 A To the Boston animal hospital.

13 Q And did you go to see him there?

14 A Yes, I did.

15 Q Do you remember about what time of day or night
16 that was?

17 A Afternoon, 4 o'clock, around then.

18 Q The latter part of the afternoon?

19 A Yes, sir.

20 Q Did you have a conversation with him at the
21 animal hospital at that time?

22 A Yes, I did.

23 Q Would you please tell us in substance what you
24 said and what he said?

25 A Well, he said to me that he needed a quarter

1 hp4 Barnaba-direct

2 of heroin, that he had some colored guys, he wanted to
3 know if I could supply it, and I said yes, I thought I
4 did.

5 Q You thought you could?

6 A Yes.

7 Q What happened then?

8 A I told him I had to have the money.

9 Q What did he say?

10 A He says okay.

11 Q What did you do then, Mr. Barnaba?

12 A I went and make sure that I could get it.

13 I went and see Gigi and make sure I could get it.

14 Q When you say you went to see Gigi, you are
15 talking about the defendant Inglese?

16 A Yes.

17 Q Where did you go to see him?

18 A At the Beach Rose Club, Wilkinson Avenue.

19 Q Was this the same day?

20 A Yes.

21 Q Did you have a conversation with him there?

22 A Yes, I did.

23 Q What did you say and what did he say, in sub-
24 stance?

25 A I told him I needed the quarter, that if he can

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Barnaba-direct

supply it. He says yes, he could, I could have it that night.

Q Was any price quoted at that time?

A It was 5500.

Q What did you say to that?

A That I would bring the money back and I would take the goods that night.

Q What did you do then?

A I went back to the animal hospital, I got the money from Richie, and I bought it to the club.

Q When you say you got the money from Richie, how much money did you get from Forbrick at that time?

A 6000.

Q \$6000?

A Yes.

Q Was this also in small bills?

A Yes.

Q Did you then go back to the club?

A Yes, I did.

Q With the \$6000?

A I took 500 out for myself and brought the 5500 over to the club.

Q Your price or your commission was \$500 per quarter?

hp6

Barnaba-direct

1 A Yes, it was.

2 Q You went back to the club then?

3 A Yes, I did.

4 Q Did you see the defendant Inglese?

5 A Yes, I did.

6 Q Where in the club did you see him, if you recall?

7 A He was by the bar, in the back.

8 Q Was anyone else present when you saw him on
9 this occasion?

10 A I think Finnegan was there.

11 Q Finnegan?

12 A Yes.

13 Q What happened?

14 A I gave Gigi the money. He counted it and put
15 it under the bar.

16 Q Was anybody else present besides yourself and
17 Finnegan when he counted it?

18 A Not that I recall. Joe Crow may have been there.

19 Q Was Joe Crow there?

20 A I think he was, yes.

21 MR. FISHER: If your Honor please, I move to
22 strike what the witness thinks, who may have been where.

23 THE COURT: All right. Ladies and gentlemen,
24 we are interested not in what the witness may think who
25

1 hp7 Barnaba-direct

2 might have been there. We are interested in what he
3 remembers about people being there or what was said.

4 All right, Mr. Curran. Go ahead.

5 Q Mr. Barnaba, when you gave the money to the
6 defendant Inglese on this occasion, according to your
7 best recollection now, who else was present, if anyone?

8 A Finnegan and Joe Crow.

9 Q Mr. Barnaba, I show you a photograph which is
10 in evidence as Government's Exhibit 1, and I ask you if
11 you recognize the person on the left side of that photo-
12 graph.

13 A Yes, I do.

14 Q Who is that?

15 A Joe Crow.

16 Q After the money was counted by the defendant
17 Inglese at the bar was there any conversation between you
18 and him at that time?

19 A He told me to hang around for a while, that
20 I would get the goods later.

21 Q Did you hang around?

22 A I did.

23 Q For about how long a period of time, approximate-
24 ly, did you hang around the club that evening?

25 A Three hours, four.

1 hp8 Barnaba-direct

2 Q About what time would that take you to,
3 approximately?

4 A About 11 or 12 o'clock.

5 Q At that time, about 11 or 12 o'clock, who was
6 in the club, as best you recall?

7 A There wasn't hardly anybody in there.

8 Q Was Gigi there?

9 A There was Gigi, myself and I think -- in fact,
10 I am sure Stasi was there.

11 Q Frank Stasi?

12 A Yes, Boo-Boo.

13 Q Is that his nickname?

14 A Yes. He was sitting at the bar.

15 Q Was Finnegan there?

16 A Not at that time.

17 MR. FISHER: Objection to the leading, if
18 your Honor please.

19 THE COURT: He just answered no.

20 MR. FISHER: I withdraw the objection, your
21 Honor.

22 THE COURT: All right.

23 Q Was Swifty there?

24 A Swifty was by the door, yes.

25 Q What if anything occurred at this point in

1 hp9 Barnaba-direct

2 time?

3 A Finnegan had left. A little while later he
4 walked in, he came back in.

5 About 10 or 15 minutes after he walked in Gigi
6 walked to the bathroom, he opened the door and he motioned
7 me over.

8 Q Did you go over?

9 A I did. He pulled a bag out from near the
10 bowl.

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1 hpp Barnaba-direct 1304

2 Q This was in the bathroom or the men's room?

3 A Yes.

4 Q What did you do with the bag?

5 A He handed it to me. I took it, put it in my

6 belt and left.

7 Q What kind of bag was it?

8 A Brown paper bag.

9 Q While you were in the club that evening, for

10 the approximately two or three hours that you mentioned,

11 did you have any conversation with the defendant Inglese?

12 A Yes, I did.

13 Q Please tell us what was said.

14 A He asked me if I want him to hold anything for

15 me.

16 Q If you what?

17 A If I want him to hold a half for me, and I said

18 I didn't think so, I had no call for it and I didn't know

19 if I could get rid of it or not.

20 Q Did he say anything else in connection with

21 that?

22 A He said he might be out after that. In other

23 words, he won't have any more for a while.

24 Q You declined?

25 A Yes, I did.

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Barnaba-direct

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Q After you received this brown paper bag, what did you do next?

A I got in my car and I went to the Boston animal hospital, to see Richie. I saw him, I gave it to him and I left.

Q Mr. Barnaba, do you know a man named Dominick Lessa, L-e-s-s-a?

A Yes, I do.

Q For about how long had you known Dominick Lessa?

A 10 or 12 years.

Q Directing your attention to a time several weeks after the transaction to which you just testified, did you see Dominick Lessa?

A Yes, I did.

MR. FISHER: If your Honor please, I would object to this line of inquiry regarding Dominick Lessa, on the basis it would appear that it is not material to proof of conspiracy, and not charged in this indictment.

THE COURT: I don't know what material you are referring to. I will permit it and see what happens. Go ahead.

Q Directing your attention Mr. Barnaba, to in or about the early part of the month of October, 1970,

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did you see Dominick Lessa?

A Yes, I did.

Q Where did you see him?

A At the Pine Tree Inn.

Q Where is the Pine Tree Inn located?

A On Boston Road in the Bronx, near -- a few
doors down from the veterinary hospital, Richie's place.

Q Right near there?

A Yes.

Q Where in the Pine Tree Inn did you meet
Dominick Lessa?

A At the bar.

Q Was anyone else present when you met with him
on this occasion?

A Richie and myself.

Q Did you have a conversation with Dominick Lessa?

A Yes, I did.

Q Will you please tell us, in substance, what he
said and what you said?

A Well, he asked me how I was doing, I asked him
how he was doing. And, if I was doing anything. I said
yes, I was, but there was nothing around, I couldn't get
anything. He says that he could get anything any time,
any amount I wanted. So, I says, "Well, give me your

1 hpp Barnaba-direct 1307
2 phone number in case I want to get in touch with you."
3 We exchanged phone numbers.
4 Q Was there any discussion about price at this
5 meeting?
6 A No, there wasn't.
7 Q Was Richard Forbrick present during this con-
8 versation?
9 A No.
10 Q Directing your attention to the following day
11 or evening, did you see Richard Forbrick?
12 A I did.
13 Q Where did you see him?
14 A At the animal hospital.
15 Q Did you talk with him?
16 A Yes, I did.
17 Q What, in substance, did he say and did you say
18 at this meeting?
19 A Well, he says he had a deal set up with a guy
20 named Trinnie.
21 Q Trinnie?
22 A Trinnie. I didn't know him. I seen him
23 hanging in the bar. He says he needed two quarters.
24 Q Trinnie needed two quarters?
25 A Yes, if I thought I could get it. I said yes.

2 I thought I could. I says, "Who are the guys?"

3 And he said, "It's for this guy Trinnie and a couple of
4 friends of his." He said, "I'll take you over to meet
5 him in the bar."

6 We went over to Trinnie.

7 Q When you say, "we went over," you mean --

8 A Richard went over to the Pine Tree.

9 Q You went with him?

10 A Yes.

11 Q And did you meet Trinnie in the Pine Tree?

12 A I did. I met Trinnie and a friend of his
13 named Louis Lepore.

14 Q Louis Lepore?

15 A Yes.

16 Q They were together?

17 A Yes.

18 Q Did you then have a conversation with Trinnie?

19 A Yes, I did.

20 Q What was said?

21 A Well, Richie introduced me to him and he, in
22 turn, introduced me to Louis Lepore, and he says that he
23 needed two quarters, a quarter for himself and Louis was
24 going to take delivery and another quarter for a fellow
25 named Mike. He said he was going to pay for his quarter

and I have to wait a day for Mike's money, but if he didn't pay, he was vouching for it, he would make it good.

Q These were quarters of what?

A Quarter kilos of heroin.

Q What did you say to that, if anything?

A I agreed. I said okay. And, we got down to the price. He says that he didn't want me to charge him too much. He put it on the basis where he had his own source, eventually he could help me maybe, if I couldn't get anything. He said, "See if you could make it a wholesale deal."

I said, "All right, just pay the man that carries it a hundred dollars for each quarter." And that's what we agreed on. I told him fifty, one hundred dollars for each quarter. He said okay.

Q Were any arrangements then made?

A I made the arrangement to be for the next night. I told him to be there 10 o'clock. I said to have Louis Lepore and Mike here. I didn't know the fellow, Mike.

Q Now, directing your attention to the next day, the next afternoon, what did you do?

A I called Lessa on the phone.

Q Dominick Lessa?

A Yes, and I told him to meet me at the Pine Tree

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Barnaba-direct

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2 that evening. I think it was about 8 o'clock.

3 Q Did you meet him at the Pine Tree?

4 A Yes, I did.

5 Q That evening?

6 A Yes.

7 Q What did you do when you met him?

8 A I told him what I needed and the price, the
9 arrangements I made.

10 Q What did you tell him?

11 A I told him I needed two quarters of heroin.
12 He said, "Okay, I can get it."

13 I told him the price and he said, "All right,
14 come on."

15 I got in his car and we went out to Long Island.

16 Q How did you go to Long Island, do you recall?

17 A We went over the Whitestone Bridge.

18 Q Do you recall what kind of car he was driving?

19 A 1970 Chevy Impala.

20 Q Do you remember the color?

21 A Green.

22 Q You went over the Whitestone Bridge to Long
23 Island?

24 A Yes.

25 Q What happened then?

1 A Before 15 minutes after we got over the bridge,
2
3 he stopped at a block and he told me, "Wait in the car."

4 MR. FISHER: If your Honor please, might I
5 renew that objection to this area of testimony. I
6 think most respectfully it is clear now if anything, it
7 has nothing to do with the case on trial.

8 THE COURT: Your objection is noted. The
9 same ruling. I assume you request, on behalf of all the
10 defendants, a continuing objection, and that will be grant-
11 ed.

12 MR. FISHER: Thank you, your Honor.

13 Q I think you testified, Mr. Darnaba, that you
14 went over to Long Island. Do you know where you were
15 in Long Island? Was it Queens, Nassau or --

16 A No, I don't know, sir.

17 Q About how far over the Whitestone Bridge?

18 A About 15 minutes after we got over the bridge.

19 Q Did there come a time when he parked the car?

20 A Yes, he did.

21 Q Then what happened?

22 A He told me to wait in the car. He got out and
23 he walked down to my left and I watched him as far as I
24 could see. He went up about three or four blocks, and it
25 seemed there was a bar on the corner and it looked like

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Barnaba-direct

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to me he went in the bar.

Q And then you waited --

A I was waiting in the car and he was back in about 20 minutes.

Q What happened when he got back?

A He got in the car and he handed me the bag. It was a brown paper bag. I put it between my legs on the seat and we left. We came back to the Bronx. He dropped me off by the Pine Tree, and I says I will see him tomorrow. He said okay. He said that he had two days to pay for it or return it. I said, "Well, I'll see you tomorrow with the money, anyway."

I went into the Boston animal hospital, Richie was waiting there.

Q That is near the Pine Tree?

A A few doors up.

Q You met Mr. Forbrick there?

A Yes.

Q What happened then?

A I took out the bag, the two packages out.

Q Two packages?

A Two quarters, wrapped in individual bags.

Q What kind of bags were they wrapped in?

A Plastic bags.

2 Q What was inside the plastic bags?

3 A Heroin.

4 Q You can see through the plastic bags?

5 A Yes.

6 MR. RICHMAN: If the Court please, I would
7 object and ask for a conference at the side bar.

8 (At the side bar.)

9 MR. RICHMAN: Your Honor, I've been following the
10 testimony of Mr. Barnaba through his own handwritten 3500
11 material.

12 THE COURT: Do I have a copy of this?

13 MR. CURRAN: It hasn't been marked yet.

14 MR. RICHMAN: We are coming to the point where
15 the government is about to introduce further testimony of
16 another transaction, which they allege occurred with Ben
17 Tolopka. I maintain they are not allowed to introduce
18 this in evidence at all. I am making an application, and
19 I have requested the dates and times of transactions and
20 was informed the only transaction occurred toward the end
21 of August, 1970. Suddenly, we have an occurrence in
22 October or November of '70. If you recall, I made an
23 application in the early part of the trial for a further
24 bill of particulars and I was not permitted that. If
25 that gets in, the defendant is being precluded from

possibly having a fair trial and he was not allowed to prepare his defense. I have the bill of particulars which is part of the pleadings in the case.

MR. CURRAN: Your Honor, my understanding, the bill of particulars motion was addressed to the substantive count in which Tolopka is named and to the overt names and the government responded and furnished a bill of particulars with respect to the substantive count and overt act or acts in which this defendant was named. Nothing here is inconsistent, your Honor, as far as I can tell.

MR. RICHMAN: I beg to differ. Obviously, if this gets in, possibly he may not get a fair trial on the substantive count. This is not the date and time and place involved. It is an entirely different transaction.

THE COURT: Overruled.

(In open court.)

(In open court.)

BY MR. CURRAN:

Q Mr. Barnaba, when you opened the paper bag, the brown bag, and removed the two plastic bags that you have just described, what did you do then?

A I put them on the table and I told Richie to go -- I asked Richie if they were in the Pine Tree. He said yes, they were.

I said, "Go in and call Louis and tell him to come in."

Q Louis --

A Louis Lepore.

Q Did Forbrick then leave the hospital?

A Yes, he did.

Q Did you stay at the hospital?

A I stood there.

Q What happened next?

A He went in, called Louis, Louis come in, and he gave Richie the money. Richie had the money already and I myself gave the package to Louis.

Q One of the two packages?

A Yes.

Q Did you have any conversation with Louis Lepore?

A Not that I recall, your Honor.

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Barnaba-direct

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Q What happened next?

3

A All I said to him, "Tell Mike to come in," and he left and a few minutes later Mike came in. I gave him the package at that time.

6

Q That's the second package?

7

A Yes.

8

Q Did you have any conversation with Mike when you gave him the package?

10

A He said he would bring the money there tomorrow afternoon, the following day, if it was okay. I said, "Okay," and then he left.

13

Q Did you know Mike?

14

A No.

15

Q Do you know his last name?

16

A No.

17

Q Do you recall anything about him?

18

A He had white hair, wore glasses and he had a wooden leg.

20

Q Did you then leave the hospital?

21

A Yes, I did.

22

Q Did anything occur before you left the hospital -- anything else?

24

A I took the money that Richie had. I gave him a hundred dollars and I took the money home with me.

25

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Barnaba-direct

1317

2 Q How much money did you take home with you?

3 A 5000.

4 Q Now, Mr. Barnaba, directing your attention to
5 the next day or next afternoon did you see Richard For-
6 brick?

7 A Yes, I did.

8 Q Where did you see him?

9 A At the animal hospital.

10 Q At that time did you have a conversation with
11 him?

12 A Yes. He told me Mike had dropped off the
13 money. He gave me the money and I called up Dominick.

14 Q How much money did he give you?

15 A 5100.

16 Q And you say you called up Dominick. Are you
17 referring to Dominick Lessa?

18 A Lessa, yes.

19 Q Did you have a conversation with Dominick Lessa?

20 A I told him I would see him, and made an
21 appointment with him for that afternoon. He says to
22 meet him on Pilgrim Avenue, near Westchester Avenue,
23 in the Bronx.

24 Q Did you go to that location?

25 A I did.

1

2

Q Did you have any conversation with him?

3

A I got in the car and gave him the money.

4

Q How much money did you give him?

5

A Ten thousand.

6

Q That's the \$25,000?

7

A Yes.

8

Q Where did you give it to him?

9

A In his car.

10

Q Do you remember the denominations of the

11

bills?

12

A Small bills, fives, tens, twenties.

13

Q Did you have any conversation with him when

14

you gave him the small bills?

15

A I gave him the money, he opened the bag, he looked

16

at the money and he said, "Gee, you brought me all

17

gobbage."

18

I said, "If it's gobbage, you don't want
it, give it to me, I'll take it."

19

20

He said, "All right. Try to get big

21

bills."

22

I said, "Whatever they give me I get, and
that's what you're going to get."

23

24

Q What happened next?

25

A He said, "All right, all right"; he was a

1 little peeved.

2 Q Did you leave then?

3 A Yes.

4 Q Mr. Barnaba, directing your attention to
5 later, a couple of weeks later, still in about the month
6 of October, 1970, did you see Richard Forbrick again?

7 A Yes, I did.

8 Q How did that come about?

9 A He called me on the phone, told me to come
10 over.

11 Q Did you go over to the animal hospital?

12 A Yes, I did.

13 Q Did you have a conversation with Richard
14 Forbrick?

15 A Yes.

16 Q What did he say and what did you say?

17 A He said he needed an eighth of coke.

18 Q An eighth of coke?

19 A Coke.

20 Q What did you say to that, if anything?

21 A I says -- he want to know if I could get it
22 and I said yes, I could. I said I would have it that
23 evening.

24 Q What did you do then?

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Barnaba-direct

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A I called Lessa.

Q Dominick Lessa?

A Yes.

Q On the telephone?

A Yes. And I made an appointment, at the Pine Tree that night, about 9 o'clock.

Q Did you meet Dominick Lessa that night at the Pine Tree?

A Yes, I did.

Q At about 9 o'clock?

A Nine o'clock.

Q What happened when you met him?

A I got in his car and we went back out to Long Island again.

Q You went back out to Long Island?

A Yes.

Q The same route, over the Whitestone Bridge?

A Yes.

Q En route with Dominick Lessa in the car did you have any conversation with him?

A Yes, I did.

Q What was said?

A He told me pretty near the same thing as the night before, that he had two days to either return it or

1 hpa7

Barnaba-direct

1321

2 pay for it, as long as the package wasn't opened, and
3 that he was doing business with Vinnie Papa.

4 Q Did he say anything more?

5 A Not at that time, that I recall, no.

6 MR. ELLIS: I object to it, your Honor.
7 Hearsay.

8 THE COURT: Objection overruled.

9 Q Did you place the order for an eighth of cocaine
10 with him?

11 A Yes, I did.

12 Q Did you have any conversation with him about
13 price?

14 A Not at that time, no. When we got there
15 he parked the car and he left, told me to wait.

16 Q Did he come back. He said he could get
17 the eighth plus another two quarters, if I wanted it.

18 Q Two quarters of cocaine or heroin?

19 A Cocaine. And I says, "I don't know, I
20 don't have any order for it."

21 He said, "You got two days, we have two days
22 to either give it back, and you got nothing to lose."
23 Then he said, "The only thing wrong, the coke is brown,
24 the color is brown, dark brown, but it's good."

25 I says, "What's the price?"

1 He says, "The eighth was going to be 1300 and
2
3 the two quarters 3500 apiece."

4 So I remarked at that time that it was a little
5 steep. I says that I was getting cheaper than that
6 from Gigi.

7 He says, "Gigi gets a one-and-one, and I
8 get pure."

9 I said, "All right, get it."

10 Q What is a one-and-one?

11 A Cut, cut goods.

12 Q Was there any mention by Mr. Lessa of his source?

13 A Well, he mentioned Vinnie's name. He says
14 Vinnie was giving Gigi a one-and-one and he was getting
15 pure from him.

16 MR. ROSENBAUM: I would appreciate it if
17 the witness would identify Vinnie.

18 THE WITNESS: Vinnie Papa.

19 MRS. ROSNER: Objection, your Honor.
20 I move to strike on the grounds it is narrative hearsay,
21 merely reciting historical facts.

22 THE COURT: I will permit it. Go ahead.

23 Q Mr. Barnaba, I think you used the words
24 "cut goods" or "one-and-one cut."

25 Would you tell us, please what you mean

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Barnaba-direct

1323

by that. How was it cut?

A One-and-one?

Q Yes.

MR. ELLIS: Objection, your Honor.

THE COURT: If you know. Do you know?

THE WITNESS: Yes, I do.

A If you take an ounce of pure and add an ounce of chemical to it, you make two ounces out of it.

Q That would be a --

A That's considered a one-and-one.

Q In other words, the end product, the two ounces, would be a one-and-one?

A All right.

1 jhal
2 Q When you say you add an ounce of chemical, what
3 chemical do you add or could you add?

4 MR. WARNER: Objection.

5 THE COURT: Do you know?

6 THE WITNESS: Yes, I know.

7 THE COURT: All right. Go ahead.

8 A Cocaine, you either add dextrose No. 2 or Epsom
9 salts.

10 Q What about with respect to heroin?

11 THE COURT: He is testifying right now as
12 to cocaine, right?

13 Q Are you familiar, Mr. Barnaba, with the cutting
14 of heroin?

15 A Yes, I am.

16 Q Is heroin --

17 MR. ROSENBERG: If your Honor please, can
18 we have him at least qualified as an expert in so far as
19 he may have done this himself before he testifies to
20 this?

21 MR. CURRAN: Your Honor, I thought he
22 pretty well qualified himself earlier.

23 THE COURT: I think he did too. I will
24 permit it. Go ahead.

25 Q Do you know how heroin is cut, Mr. Barnaba?

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Barnaba-direct

1325

2 A Yes, I do.

3 Q How is it cut?

4 A It's cut with either quinine, milk sugar or
5 mannite. You can use the whole three or either one.
6 It doesn't matter.

7 Q Directing your attention, Mr. Barnaba, back
8 to your conversation with Dominick Lessa in Long Island,
9 I think you last testified about Lessa's statement with
10 respect to the defendant Inglese and his reference to
11 Vincent Papa.

12 Did you then have a conversation with
13 him about the two quarters of a kilo? You already
14 testified to your conversation about the one eighth and
15 the two quarters of cocaine.

16 A Yes.

17 Q Did he then leave the car?

18 A Yes, he did.

19 Q What happened next?

20 A Then he was gone for about a half hour, maybe
21 a little more. He came back and he got in the car and
22 he gave me the bag.

23 Q What kind of bag?

24 A A brown paper bag.

25 Q What did you do with it?

1 jha Barnaba-direct 1326

2 A I put it in between my legs on the seat.

3 Q Where did you go then?

4 A He dropped me off by Richie's up on Boston
5 Road.

6 Q At the animal veterinary hospital?

7 A Yes.

8 Q Did you go into the hospital?

9 A I did.

10 Q Did you see Richard Forbrick there?

11 A Yes, I did.

12 Q What happened then?

13 A Well, I told Richie, I said I had the eighth
14 and another two quarters of coke, and see if he could
15 do anything with it, try and get rid of it. He said
16 he didn't know of anybody offhand.

17 I said, "Well, we got two days to either pay
18 for it or return it, so see what you can do with it."

19 He says, "Okay."

20 Q Did he mention any possible source for the
21 material?

22 A Well, he mentioned --

23 MR. RICHMAN: Objection. Pure speculation.

24 THE COURT: I will sustain the objection
25 on the ground of form. The question was did he mention

1 JHA Barnaba-direct 1327

2 any possible sources. Is that what you mean?

3 MR. CURRAN: I withdraw the question, your
4 Honor.

5 THE COURT: All right.

6 Q Did he say anything about possible customers?

7 A Well, he mentioned a guy named The Arrow.
8 He said he was going to see him.

9 Q The Arrow?

10 A Yes.

11 Q Did you then leave?

12 A I left.

13 Q Did there come a time when you saw Richard
14 Forbrick again?

15 A Yes.

16 Q When was that?

17 A The following day.

18 Q Where did you see him?

19 A At the animal hospital.

20 Q Did you have a conversation with him then?

21 A Yes, I did. He says that he couldn't get
22 rid of the brown, but that he had got rid of the
23 eighth -- the eighth was what he originally had called
24 for -- and that he had got it back.

25 Q Gotten back the brown?

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A No.

Q The eighth?

A The eighth, that there was a beef on it
that it was no good.

Q Did he say to whom he had given it?

A Well, yes.

MR. RICHMAN: Objection.

THE COURT: No, I will permit it. Go ahead.

Q Ddd he say, Mr. Barnaba, to whom he had given
the eighth?

A He said he had given it to Ben and Ben had
brought it back that morning, that he says he didn't want
it, it was no good.

Q Did you say anything to that?

A I said, "Where is it?"

He says, "It's in the back. He dropped it
off."

I says, "Well, get it, let me see it."

So we walked in the back and he got the bag.
The bag was completely open, all open, you know, ripped
from the top.

Q Was this a plastic bag?

A Yes. And when I looked at it I seen that
there was like mannite added to it, it was just laying on

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Barnaba-direct

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2 the top.

3 So I says, "I can't take this back. The bag
4 is open. He's going to have to take it and pay for
5 it."

6 I said, "Get him over here. I want to talk
7 to him."

8 So he called and Ben came over. We had a
9 little argument.

10 Q When you say Ben came over, to whom are you
11 referring?

12 A Ben Tolopka.

13 Q The defendant Benjamin Tolopka, who you
14 identified here yesterday?

15 A Yes.

16 Q Please tell us as best you remember when
17 Tolopka came over what you said and what he said.

18 A Well, I says I couldn't take it back, he would
19 have to pay for it, being he opened the bag.

20 He says, "Well, I don't want it. It's no
21 good."

22 I says, "Well, there is something added in here.
23 Who put this in?"

24 He said, "I didn't put nothing. That's the
25 way it was. I didn't open it."

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Barnaba-direct

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I says, "Why did you open the whole bag?"

He says, "Well, I had to test it."

I says, "If you want to test it just slit the bag, you don't open the whole bag."

We got into a heated discussion. About that time he opened his jacket, you know, he moved his jacket over, and I seen he had a pistol. So I didn't push it any more.

I called Richie and I told Richie, I said, "From now on don't give him nothing any more. Make sure he doesn't get anything."

Q Was that the extent of the conversation?

A Yes.

Q What happened next?

A Well, I called Dominick.

Q Lessa?

A Yes. Well, before that Richie says he couldn't get rid of the two quarters. So I called Dominick and told him that I couldn't do anything with it and he made a meet with me that night on -- he says meet him on 61st Street and First Avenue about 9 o'clock. I took the two quarters and I met him there.

Q You took the two quarters of brown cocaine?

A Coke, yes.

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Barnaba-direct

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2 Q What did you do there when you met him?

3 A I told him that we couldn't get rid of it, that
4 he would have to take it back.

5 He says, "Okay." He says, "I'll bring it
6 back."

7 I said, "Well, what did you meet me all the
8 way down here for? You got to go all the way out to
9 Long Island."

10 He says, "I'll go over the 59th Street Bridge."

11 He got in his car and he left and then I left.

12 Q Directing your attention, Mr. Barnaba, to the
13 following day or the next day, did there come a time when
14 you again spoke to Richard Forbrick?

15 A I did.

16 Q What was said in that conversation?

17 A He said that he had spoke to The Arrow and The
18 Arrow was interested in the eighth, that he may
19 take it, that he was going to put it in bags and get
20 rid of it. He says, "How much should we charge him
21 for it?"

22 I said, "Well, get 1800, you know, get what
23 we got in it."

24 He says okay, he'll let me know.

25 In the meantime I called Dominick, because

Jha Barnaba-direct 1332

I had to pay for it, the time was up, and I met him on Buhre Avenue and Westchester Avenue in the Bronx.

Q When you met him there what did you do?

A Well, I told him that I had trouble with the eighth, that it was bad, he would have to wait another day or so for the money.

I'm sorry. I left something out. Before I met him me and Richie put the 1800 together.

Q Your own money?

A Yes.

Q How much did you put in and how much did Richard Forbrick put in?

A I put 550, Richie put the rest.

Q That would be 1250?

A 1250.

Q Did you have that money with you when you met Dominick Lessa?

A When I met Dominick, yes.

Q I think you were testifying about your conversation with Lessa.

A Right. I tried to stall him for a couple more days but he wouldn't go for it. He got mad. He says, it was good, I was lying or somebody was lying, the money, and I says, "All right, if you want the money,

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Barnaba-direct

1333

2 here is the money," and I paid him. But we got in a
3 heated discussion and we left off on bad terms.

4 Q Directing your attention to the next day
5 did you see Richard Forbrick again?

6 A Yes, I did.

7 Q Where did you see him this time?

8 A At the Boston Animal Hospital.

9 Q Did you have any conversation with him?

10 A Yes. He said that The Arrow was going to
11 take the eighth. I told him, "Well, get the 1800, what
12 we got in it, and forget about it."

13 Q Did you ever get money from Richard?

14 A Yes. Later on that day he told me The
15 Arrow was there and took it and we got the money for
16 it.

17 Q Did you get back your \$550?

18 A Yes.

19 Q Up to this time did you know The Arrow's name,
20 first name or last name?

21 A No. Well, pardon me. I knew his first
22 name, but not his last name.

23 Q Had you ever seen him up to this time?

24 A No.

25 Q What did you understand his first name to be?

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Barnaba-direct

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A Paul.

3

Q Paul?

4

A Paulie.

5

Q Paulie?

6

A Yes.

7

Q Do you know a man named Tommy Greco?

8

A Yes, I do.

9

Q Directing your attention, Mr. Barnaba, to a

10

couple of weeks after the situation to which you just

11

testified, did you see Tommy Greco?

12

A Yes, I did.

13

Q Do you know what Tommy Greco does for a

14

living?

15

A Drives a cab.

16

Q Do you know the name of the cab company?

17

A Crosby.

18

Q Where did you see --

19

THE COURT: Would you repeat that answer,

20

please?

21

(Record read.)

22

Q Where did you see Tommy Greco?

23

A He came to my house.

24

MR. ELLIS: Your Honor, can we get a time?

25

MR. CURRAN: I think the testimony was this

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Barnaba-direct

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2

was within a couple of weeks after the situation just testified to.

3

4

MR. WARNER: When was that?

5

Q He came to your house, Mr. Barnaba?

6

A Yes.

7

Q Did you have a conversation with him?

8

A He said that Gigi wanted to see me.

9

Q He said that Gigi wanted to see you?

10

A Yes.

11

Q Did you go to see Gigi?

12

A Yes, I did.

13

MRS. ROSLER: Your Honor, I move to strike

14

the last answer on the ground that Greco has not been alleged as a co-conspirator here.

15

16

THE COURT: I will permit it to stand.

17

Q Would you place this in about the month of

18

November of 1970?

19

A Yes.

20

Q Where did you see him, Gigi?

21

A At the club, Beach Rose Club.

22

Q Was anyone else present?

23

A Joe Crow was there.

24

Q I don't mean in the club, the whole club, Mr.

25

Barnaba. I am talking about right where you saw the

2 defendant Inglesse was anybody else present?

3 A Joe Crow.

4 Q Did you have a conversation with the defendant
5 Ingles at that time?

6 A Yes. He said that if I needed anything he
7 had it, and at this time, a little later, Joe Crow says,
8 What you been doing? You been buying from somebody else?

9 I says, "No."

10 Q Directing your attention to some time shortly
11 after that, in about the month of November, 1970, did
12 you again talk with Richard Forbrick?

13 A Yes, I did.

14 Q How did that come about?

15 A He called me on the phone, told me to go
16 over.

17 Q Over to the animal hospital?

18	A	Yes.
----	---	------

19 Q Did you do that, Mr. Barnaba?

20 A I did.

21 Q Was there a conversation?

22 A. Yes.

23 Q Tell us, please, what was said.

24 A He said he needed a quarter of coke and a
25 quarter of heroin.

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Barnaba-direct

1337

Q And what did you say?

A Well, he wanted to know if I could get it.
I says I thought I could get it.

Q What did you do then?

A I went to the club and I told Gigi what I need
and if I could get it. He says I could have it that
night.

Q Was anyone else present at this conversation?

A The conversation itself?

Q Yes.

A I don't think so, no.

Q What happened then?

A I went back to Richie and told him that I
had to have the money, that I could get it.

Q Was there any discussion with the defendant
Inglese about price?

A I don't think so at that time, no. We had
the price set.

Q Did you ask Forbrick for money at that time?

A Yes, I did.

Q Did he give you money?

A Later on, yes.

Q How much money did he give you?

A He gave me 3500.

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Q What Kind of bills?

A Small bills.

Q Did there come a time when you went back
to the club?

A I went later on with the money, yes.

Q To the club?

A Yes.

Q Who did you see there?

A I saw Cigi and I gave him the money.

THE COURT: What club are you referring to?

Q What club --

A Beach Rose Club on Wilkinson Avenue.

Q The same club you have testified about?

A Yes.

Q Was anyone else present when you gave the defendant Inglese the money?

A Joe Crow was there?

Q What happened when you gave him the money, if anything?

A He took the money and put it under the bar. I don't think he counted it. Finnegan was there too. He says to see Finnegan and Joe Crow, they would tell me how to pick it up.

I walked over, I saw Joey, and he says, "Where is your car?"

I says, "Outside."

He says, "Take the car, go down the block and park and wait there."

I said, "Okay."

I got in my car, went down the block and parked it and waited. About ten or fifteen minutes later Joe Crow and Finnegan come down in a car. It was a Cadillac, '68 or '9, black convertible. It had Jersey plates on

1 hp2 Barnaba-direct

2 it.

3 I put my window down. They pulled alongside
4 of me. I put my window down. Finnegan put his window
5 down and handed me the bag. I took it, I put it in my car,
6 and I left and they left.

7 I drove up to Richie's at the Boston animal
8 hospital. I parked and I walked in. When I walked in
9 there was a colored guy there with a white girl. I passed
10 them up. I walked into the back and I put the bag on
11 the table.

12 Q Did you know either of those two people, "r.
13 Barnaba?

14 A No. I put the bag on the table.

15 Q In the same room that they were in?

16 A No, the backroom. Fichie followed me in.

17 Q That is Forbrick?

18 A Yes.

19 Q Did you have a conversation with Forbrick in
20 that backroom?

21 A Yes.

22 Q What did you say and what did he say?

23 A I says, "Who is that out there?"

24 He says, "They are all right, don't worry about
25 it."

1 hp3 Barnaba-direct

2 He says, "His name is Jimmie," he says, "from
3 Washington."

4 I said, "Okay."

5 So I walked out. He come out with me, Richie.
6 And as I was leaving he called me Jimmie over and in-
7 troduced me to him. We said hello, shook hands, and Jimmie
8 and the girl and Richie walked in the backroom and I left.

9 Q Where was the bag when you left?

10 A On the table in the back.

11 Q Directing your attention to within a short
12 period of time after this happened did you see Richard
13 Herbrick?

14 A Yes, I did.

15 Q What happened?

16 A He had to give me my money.

17 Q How much money did he give you this time?

18 A A thousand dollars.

19 THE COURT: Mr. Curran, is this a good place
20 for the morning break?

21 MR. CURRAN: Yes, your Honor.

22 THE COURT: All right, fine.

23 Mr. Marshal, will you escort the jury to the
24 juryroom.

25 Everybody else remain seated.

1 hp4 Barnaba-direct

2 (Jury left the courtroom.)

3 (Recess.)

4 (In the robing room.)

5 MR. CUPPAN: Your Honor, in the next portions
6 of the witness Barnaba's testimony he is going to be
7 referring to a couple of situations and I wanted to bring
8 it out in advance to avoid any possible problems in the
9 courtroom.

10 The first situation your Honor has already I
11 believe ruled upon in that it has to do with Barnaba
12 testifying to the effect that Richard Forbrick told him
13 in the course of a conversation about Paulie The Arrow
14 Gregorio, that Paulie The Arrow had been shot in the knee
15 by the defendant Butch Pugliese and that occurred when he
16 raised his knee to avoid a shot in the head.

17 THE COURT: In the head?

18 MR. CUPPAN: In the head. He was sitting down.

19 THE COURT: It has to be a poor shot.

20 MR. CUPPAN: The story that Forbrick told
21 Barnaba was when Butch Pugliese went to shoot him -- this
22 is in the house of another defendant -- when the gun came
23 out, your Honor, he went like this and got shot in the
24 knee instead of the head. I believe your Honor ruled
25 on that in connection with Mr. Phillips' opening statement.



hp5

Barnaba-direct

1 I mention it again out of an excess of caution, just to put
2 defense counsel and your Honor on notice as to precisely
3 when it is coming.

4
5 Second, your Honor, and of considerably more
6 significance, there is testimony from this witness and
7 two other government witnesses which is absolutely
8 critical. It has to do with the day and the period of
9 time before the day when Butch Pugliese went to jail.

10 The testimony, your Honor, from Barnaba and
11 from the other witnesses will be wholly unintelligible
12 if they are not allowed to relate that point, because part
13 of the testimony by Barnaba, for example, which explains
14 why Butch Pugliese and he are dealing together is explained
15 by the fact that Butch Pugliese is turning over certain
16 customers, some of whom are defendants in this case, to
17 Barnaba. The reason he is turning them over is because
18 he is making plans to go away to jail. That pervades
19 almost all of the testimony, your Honor.

20 The same problem exists with respect to two
21 other government witnesses, Harry Pannirello and Tennessee
22 Dawson.

23 THE COURT: The same defendant?

24 MR. CURRAN: The same facts, the same defendant,
25 your Honor.

hp6

Barnaba-direct

1 hp6 Barnaba-direct

2 MR. PHILLIPS: With respect to the testimony

3 of Harry Pannirello particularly, the government's

4 theory is that Harry Pannirello prior to Pugliese going

5 to jail was merely a worker for Pugliese, but pursuant to

6 a meeting prior to Pugliese going to jail Pugliese brought

7 Pannirello and Dilacio, Pat Dilacio, a fugitive defendant

8 in this case, to be partners and to take over his entire

9 operation after he went to jail. So it shows a change of

10 the roles in the conspiracy of two major people, one of

11 whom will be testifying as a government witness.

12 MR. CURRAN: In addition, your Honor, with

13 respect to Barnaba, just to give you a more full picture,

14 Barnaba and the defendant Pugliese worked together on

15 construction in the Fall of 1971. But Pugliese got

16 Barnaba that job. Butch Pugliese was somewhat of a

17 shop steward of a particular location and had some influence

18 with the union. Barnaba did not.

19 Butch Pugliese told Barnaba that the reason he

20 was working at this point in time was to build up a work

21 record which would help him with the jail authorities.

22 In addition, your Honor, on the night before

23 Butch Pugliese goes to jail there is a farewell party

24 with conversation about which Barnaba is to testify and

25 that conversation becomes again fairly meaningless unless

1 hp7 Barnaba-direct

2 Barnaba can explain the reason Pugliese is asking him what
3 he asks him.

4 In addition, your Honor, on the very day he
5 goes to jail, in the courthouse, just before he goes
6 into court to be sentenced, Barnaba is there and another
7 defendant, not now on trial, arrives on the scene to also
8 say goodbye to the defendant Pugliese and Barnaba is
9 introduced to him. That particular situation again
10 becomes wholly meaningless unless it can be shown the
11 exact circumstances under which it occurred.

12 I submit, your Honor, there is no way in the
13 entire context of this testimony, as well as Pannirello's
14 and Dawson's, that this thing can be intelligently, and,
15 indeed, fairly portrayed to the jury unless this fact can
16 be brought out in the natural way that it occurred.
17 We do not, of course, propose to bring out what he was
18 going to jail for.

19 MR. ROSENBERG: I am glad at least for that,
20 your Honor.

21 I think, your Honor, we had argued the law
22 at a certain time and I think the Court had ruled, if my
23 recollection serves me, that the government would be
24 precluded from stating --

25 THE COURT: No, that is not quite it. What

1 hp8 Barnaba-direct

2 I said was they couldn't open, nothing in the opening about
3 it.

4 MR. ROSENBERG: I think the problem exists now
5 as it existed when you admonished the government not to
6 allude to it, your Honor. To bring out the fact that the
7 man was going to jail is bringing in his character testi-
8 mony even before he takes the stand. I think the law
9 is well established --

10 THE COURT: Even before he takes the stand?
11 Do you intend to put him on the stand? I don't care.

12 MR. ROSENBERG: I realize that, but I think
13 the defendant at least has that option. If he doesn't
14 take the stand his previous character should not come into
15 play.

16 In the interests of fair play and justice,
17 I think that it can be circumvented. I appreciate the
18 government's problem in this area, but I think that in an
19 effort to be fair to the defendant they could say that he
20 was going away, which would be bad enough. I think in
21 that area the jury would speculate as to where he was
22 going. I would object to that, but I would at least
23 settle for that rather than having him say that he was
24 going to jail. Going out of town, like I say, may
25 give rise to speculation, but at least is not as bad

1 hp9 Barnaba-direct

2 as their saying he is going to jail.

3 With respect to the shooting, your Honor, we
4 have another problem here in addition to his character
5 with respect to a shooting, the fact that the defendant
6 may or may not have committed another crime other than
7 the one he is charged with. The additional problem we
8 have is that Gregorio allegedly told this to Barnaba,
9 who is now repeating it. So you are also in the area
10 of hearsay.

11 THE COURT: I don't even think that it is that
12 clear. It's Gregorio told Forbrick, Forbrick told
13 Barnaba.

14 MR. ROSENBERG: If there is such a thing as
15 double or triple hearsay, your Honor, that is the area
16 that you are in.

17 I think that the government perhaps can argue,
18 "Well, we are not offering it for the truth necessarily,
19 but we are offering it just as a circumstance to explain
20 the situation." I don't really think that that is an
21 honest and fair approach to the problem, your Honor.
22 Once it comes out whatever admonition the Court could give
23 to the jury I think really doesn't take away the im-
24 portance and --

25 THE COURT: The sting.

1 hp10

Barnaba-direct

2 MR. ROSENBERG: -- the difficult situation
3 that I am going to be faced with and the defendant
4 himself.

5 MR. CURPAN: Very briefly, your Honor, on a
6 couple of things that Mr. Rosenberg said.

7 In addition to Forbrick telling Barnaba as to
8 what Paulie The Arrow told Forbrick, Butch Pugliese told
9 the same story to Tennessee Dawson, another government
10 witness. We submit that those statements in this context,
11 the context of this narcotics conspiracy, ar in furtherance
12 of the conspiracy.

13 No. 2, your Honor, on the question of law,
14 I think it is very well established, as your Honor knows,
15 that proof of other crimes or proof of other prejudicial
16 situations, if you will, is not necessarily to be excluded
17 if it forms a part of the whole of the proof of the case
18 that is being tried. That is the very situation we have
19 here.

20 If we try in any way to fudge this in a way
21 that isn't truthful from the witness's standpoint the
22 jury is not going to get the picture that they are
23 absolutely entitled to get. They are not going to get
24 the real picture of this conspiracy, and it may even cause
25 a credibility problem with witnesses where there is no

1 hpl1 Barnaba-direct

2 right to be a credibility problem.

3 MR. LOPEZ: Your Honor, may I just add something

4 THE COURT: Sure.

5 MR. LOPEZ: -- amicus curiae on this issue.

6 On the question of violence, your Honor, I
7 don't think that the matter with Paulie The Arrow, the
8 shooting with Paulie The Arrow, has any probative value
9 as far as the conspiracy is concerned. We are trying to
10 add here an element of violence.

11 I understand what the government's position is
12 in connection with United States vs. Dymun, where the
13 Second Circuit says that violence is part and parcel of
14 narcotics conspiracy. It's also part and parcel of a
15 lot of other crimes. But here the probative force of
16 whether or not Frank Pugliese took a shot at Paulie The
17 Arrow and was a poor shot and missed is not probative of
18 this conspiracy. It adds an unnecessary element which is
19 extremely prejudicial and of low probative content.

20 So at least as to that I think we should eliminate
21 Dymun's testimony on that point and we should also
22 certainly eliminate Barnaba's, as an added inference in
23 this case which really and markedly shouldn't deserve to
24 be there.

25 My point is this: Sometimes the jurors, despite

1 hpl2

Barnaba-direct

2 your Honor's limiting instructions, give really an unfair
3 weight to certain types of evidence, and I think it's
4 precisely this type of evidence, your Honor, that should
5 be withdrawn from the jury because of its low probative
6 content and its high prejudicial matter.

7 MR. CURRAN: Your Honor, I think it's highly
8 probative. It's certainly reasonable to infer they weren't
9 quarreling over a lunch check. I think this evidence
10 is very probative of the entire narcotics conspiracy.

11 THE COURT: I understand your positions,
12 gentlemen. Let me think about it.

13 MR. CURRAN: Thank you, sir.

14 MR. ROSENBERG: Thank you, your Honor.

15 MR. LOPEZ: Thank you, your Honor.

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(At the side bar.)

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THE COURT: In the robing room, we were discussing two items of evidence. I will assume they will come up in the normal course of the testimony between now and the luncheon break, is that correct, Mr. Curran?

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MR. CURRAN: I think they will, your Honor.

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THE COURT: As to the defendant Pugliese going to jail, I feel in all the circumstances, we will have to let that in. I'm greatly troubled by the hearsay, the triple hearsay. I understand your theory about the defendant shooting somebody in the knee, but I don't think how this witness, being so far removed in the hearsay chain, would be permitted --

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MR. CURRAN: Your Honor, in that connection, I didn't make it clear in the robing room, perhaps I should have, this witness will testify after this conversation about that time, he saw Paulie Gregorio leaving the hospital with heroin, with drugs, and after this witness made a delivery to Forbrick, Paulie Gregorio comes to the hospital, picks up the drugs, and leaves on crutches, with the bags secreted in the struts of one of the two crutches. Of course, Forbrick is a defendant, your Honor, so I submit it is not hearsay of any kind. Also corroborating what will come from another witness.

1 He will testify Pugliese told him the story, Pugliese told
2 Dawson the story, that is, directly.

3
4 MR. LOPEZ: Why don't we delay until Dawson
5 testifies on this matter, and when that situation develops,
6 your Honor will have more of a grasp. I think that the
7 prevalent problem now is Barnaba's relating of why Paulie
8 Gregorio is on crutches. It is imply unfair and
9 extremely prejudicial for the probative weight this is
10 worth.

11 MR. CURRAN: It seems to me, your Honor, the govern-
12 ment has a right to have witnesses corroborate facts of
13 this nature. I don't think we should be precluded from
14 Barnaba testifying and take it up with Dawson later.
15 I think we have a right to bring out the evidence.

16 MR. LOPEZ: Mind you, your Honor, the objection
17 is not to have Barnaba testify that he saw him on crutches.
18 There is no problem there. But to give this triple hearsay
19 explanation of why he is on crutches --

20 MR. CURRAN: It is not hearsay at all.

21 MR. LOPEZ: Barnaba heard it from Forbrick who
22 heard it from somebody else. That is hearsay. He is
23 not a witness to the act of event. He doesn't hear it
24 from Paulie Gregorio or from Pugliese. Later, if your
25 Honor permits Dawson to testify to the fact, of course

1 hp3

Barnaba-direct

1353

2 they can tie up the probative element of seeing him on
3 crutches, with the conversation of Dawson through
4 Pugliese. I think we are unnecessarily creating here
5 an unnecessary influence to this jury, especially when
6 they have a direct way of bringing it in.

7 MR. CURRAN: Of course, our position is Forbrick
8 statement is a statement in furtherance of this --

9 THE COURT: I understand. How soon does this
10 come up?

11 MR. CURRAN: I think this will come up fairly
12 soon, your Honor. This comes up before the second
13 situation.

14 MR. ROSENBERG: The shooting?

15 MR. CURRAN: Yes. That comes first.

16 THE COURT: All right, I will let it in.

17 MR. LOPEZ: If your Honorplease, rather than
18 get up at the time of the offer and move for a mistrial,
19 I'd better do it now and may I have --

20 THE COURT: Yes, you have an exception.

21 (In open court; jury present.)

22 BY MR. CURRAN:

23 Q Mr. Barnaba, I am going to ask you to continue
24 to speak loudly and clearly into the microphone. Mr.
25 Barnaba, directing your attention now to a couple of

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Barnaba-direct

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weeks later, still in about the month of November, 1970,
did you see or meet with Richard Forbrick again?

A Yes, I did.

Q How did that come about?

A He called me on the phone, and told me to go
over, that he wants to see me.

Q Did you go to the animal hospital?

A I did.

Q Did you have a conversation with him?

A Yes, I did.

Q Please tell us what was said.

A He said he needed a quarter of H.

Q That's heroin?

A Heroin, and if I could supply it. I said yes,
I could. That I had to have the money.

Q You said you had to have the money?

A Yes.

Q What did he say?

A I believe then he said if I didn't have it then,
I would have to go back and get it later.

Q And did you go back later?

A I did.

Q Before going back, did you go anywhere else?

A I went to the club, Beach Rose.

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Barnaba-direct

1355

Q The Wilkinson Avenue --

A Wilkinson Avenue.

Q Did you see anyone there?

A I saw Gigi.

Q Did you have a conversation with him?

A Yes, I did.

Q Was anyone else present at this conversation?

A Finnegan, Joe Crow.

Q What was said?

A I told him I needed the quarter, that I would bring the money later and if I could have it, and he said yes, I could.

Q Did you see Forbrick?

A I did. I went up, picked up the money and brought it back to the club on Wilkinson Avenue.

Q Do you recall how much money you picked up from Richard Forbrick at this time?

A 6000.

Q Was this in small bills?

A Yes.

Q What did you do then?

A I took 500 out for myself and I brought 5500 to the Wilkinson Avenue club.

Q What did you do with the money at the club?

1 hp

Barnaba-direct

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2 A I gave it to Gigi.

3 Q And did he count the money on this occasion?

4 A Yes, he did.

5 Q Where in the club did he do that?

6 A At the bar.

7 Q Was anyone else present when he counted it,
8 on this occasion?

9 A I think Freddie was there.

10 Q What happened after he counted it?

11 A He put it on the bar and he had a conversation
12 with Finnegan and Boo-Boo.

13 Q When you say Boo-Boo, you are talking about
14 Frank Stasi?

15 A Yes, I am.

16 Q Did you hear the conversation?

17 A No. I was standing off to the side.

18 Q Then what happened?

19 A Boo-Boo and Finnegan started to walk out.
20 I got the impression I should have went with them. I
21 started to follow.

22 MR. FISHER: Objection to his impression.

23 THE COURT: Yes. He started to follow.

24 Q Did anything occur which led you to start to
25 follow?

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A I started to follow them out. I was going with them, and Boo-Boo turned around and said, "No, wait here, I'll get it in your car."

Q Stasi said that?

A Yes.

Q Did you have any other conversation with Stasi at that time?

A He asked me where my car was and I said it was outside by the curb. I told him the car.

Q What did you tell him?

A I told him it was a '62 Thunderbird, maroon and black, outside by the curb.

Q What happened then?

A They left. About 20 minutes later, they came back.

Q "They" is who?

A Boo-Boo, and Boo-Boo said, "It's in your car." So, I went out and got in my car and the package was on the seat, driver's side.

Q On the seat?

A On the top, a brown paper bag. I opened the door and took the package and put it under the seat and I got in my car and I left. I went up to the Boston animal hospital. I went inside and gave it to Richie.

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Barnaba-direct

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Q You gave it, referring to what?

A The package.

Q Did you open it before you gave it to Richie?

A No.

Q You just gave him the package?

A Yes.

Q Mr. Barnaba, directing your attention to approximately two weeks later, to the end of about November, 1970, did you talk to Forbrick again?

A I did.

Q And how did that come about?

A He called me on the phone and told me to go over, he wants to see me. I went over --

Q About what time would you place this visit?

A 3.30, 4, around that time.

Q In the afternoon?

A Yes.

Q Was there a conversation with him at that time?

A Yes.

Q Please tell us what was said.

A He said to me he needed another quarter of H, heroin, and if I could supply it. I said yes, I could. I told him I would be back, see him later. I got out of my car and went to the Beach Pose Club.

1 hp

Barnaba-direct

1359

2 Q Did you have any money with you this time?

3 A I think I did, yes.

4 Q Where did you get the money?

5 A No, I didn't have the money with me then, no.

6 I wanted to check, to make sure I could get it. I picked
7 up the money later.

8 Q When you went to the Wilkinson Avenue Club,
9 whom did you see there?

10 A I saw Gigi.

11 Q Did you have a conversation with him?

12 A Yes.

13 Q Please tell us what was said.

14 A I said what I needed. I told him I needed
15 a quarter if I could get it, and he said you could get it
16 in the night time.

17 Q What did you do then?

18 A I went back to the club.

19 Q Back to the club or --

20 A To the animal hospital, and I picked up the
21 money from Richie.

22 Q How much money did you pick up from Forbrick?

23 A It was 5500 at that time.

24 Q \$5500?

25 A Yes.

1 hp

Barnaba-direct

1360

2 Q Was this in small bills?

3 A Yes.

4 Q What did you do then?

5 A I brought it to the Wilkinson Club and gave it
6 to Gigi.

7 Q Where in the club did you give it to Gigi?

8 A At the bar.

9 Q Did you count the money?

10 A He took it out and put it on the bar and he
11 called Butch Mamone to help him count the money.

12 Q Was Butch Mamone in the club?

13 A Yes, he was standing right there.

14 Q Did Butch Mamone help count the money?

15 A Yes, he did.

16 Q What did you say, if anything?

17 A I said -- well, it was a joke, really, "It's
18 my money, I should help you count it."

19 Q Mr. Barnaba, do you see the man whom you have
20 referred to as Butch Mamone in the courtroom?

21 A Yes, I do.

22 Q Would you please identify him by pointing to
23 him?

24 A He's over there, gray suit (indicating).

25 MR. ELLIS: What color suit?

1 THE WITNESS: Fifth one down from my left.

2 MR. ELLIS: We will stipulate --

3 MR. CURRAN: Your Honor, I would like the witness
4 to identify the defendant Mamone.

5 THE COURT: I think he has.

6 THE WITNESS: Fifth one down from the left.

7 MR. CURRAN: Your Honor, may the record show
8 the witness has identified the defendant Benjamin Mamone.

9 THE COURT: Yes.

10 Q After the money was counted, Mr. Barnaba, what
11 happened next?

12 A He told me to go back that night.

13 Q Who told you that?

14 A Gigi.

15 Q Did you leave the club?

16 A I did.

17 Q Did you return later that night?

18 A I did.

19 Q What happened when you returned, if anything?

20 A I went back and I saw him, Gigi, and he says to
21 meet him at his house at 12 o'clock that night.

22 Q About what time did you see him at the club
23 when he said this?

24 A 3, 9 o'clock.

Q Did you go to his house that night?

A I did.

Q Where did you go, where is his house?

A Dwight Place, in the Bronx. It's called Country Club Section.

Q What time did you arrive there?

A 12 o'clock.

Q Did you go into his house?

A Yes, I walked in and I walked to the back of the house. When I got there, in the back, there was Gigi, Finnegan and Joe Crow standing there outside.

Q Outside where?

A Sort of like a patio in the back.

Q In the back yard of the house?

A Yes.

Q And what happened?

A Finnegan handed me the package, and I put it in my belt and I left.

Q What kind of package did Finnegan hand you?

A Brown.

Q Where did you go then?

A Boston animal hospital, and I left it with Richie and I left.

Q Directing your attention to approximately two

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weeks later in about the month of December, 1970, did you
again hear from Richard Forbrick?

A Yes, I did.

Q Was that by telephone?

A Yes.

Q What happened?

A He told me to go and I went over.

Q When you say over --

A To the Boston animal hospital. He said he
needed an eighth.

Q An eighth of what?

A Heroin.

Q Did he give you any money?

A 3500.

Q He gave it to you then?

A I think it was then. I'm pretty sure.

Q What did you do?

A I went over to the Beach Rose Club on
Wilkinson Avenue and gave it to Gigi.

Q Please speak up.

A I went over to the club and gave it to Gigi.

Q Did you have a conversation with him?

A Yes. I told him I needed the eighth.

Q Was anyone else present at this conversation?

A Finnegan and Joe Crow was there.

Q You said you want an eighth?

A Yes.

MR. FISHER: Objection, your Honor, again,
to what the witness thinks.

THE COURT: We want to know what the witness
knows, not what the witness thinks.

Q Mr. Barnaba, when you talked to the defendant
Inglese, as you have just testified, and told him you
wanted an eighth, to the best of your recollection was
anyone else present at this conversation?

A Finnegan and Joe Crow.

Q Is that your best recollection?

A Yes, it is.

Q After you told him you wanted an eighth did you
give him the money?

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Barnaba-direct

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A Yes, I did.

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Q Was this in small bills too?

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A Yes.

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Q What happened then?

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A He told me to go back that night.

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Q Did you leave the club?

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A Yes, I left.

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Q Did you go back that night?

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A I did.

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Q What happened?

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A He didn't have it. He says I would have to

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go back the next night.

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Q What did you say?

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A I said okay.

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Q Did you return to the club the following

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night?

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A I did.

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Q What happened then?

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A Still didn't have it.

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Q Is that what he said?

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A Yes.

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Q Did you continue to return to the club?

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A Yes, I did, for about 10 days, maybe more.

25

Q Did you see Gigi on each occasion?

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2 A Yes, I did.

3 Q What did he say?

4 A He said he was expecting it, I would have to
5 wait, not to worry about the money.

6 Q Mr. Barnaba, on these occasions that you
7 returned to the club, during this approximately 10-day
8 or two-week period did you have occasion to spend time
9 in the club?

10 A Yes, I hung around for a little while.

11 Q Directing your attention to one of those
12 visits, did you see anyone come into the club?

13 A Yes, I did.

14 Q Was he someone you had seen in the club before?

15 A No.

16 Q Would you describe that man?

17 A It was a tall, thin man. He had a gray over-
18 coat on and he come with two shirt boxes tied up,
19 carried them in. And he walked into the back.

20 Q To the back of what?

21 A Of the club.

22 Q Was this in your view?

23 A Yes. Well, I seen him go to the back.
24 The back wasn't in my view, no.

25 Q He went into a back room?

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hpa4

Barnaba-direct

1367

2

A Yes.

3

Q Was anybody else there, in the back room?

4

A Not that I know of.

5

Q What happened?

6

A Gigi walked in.

7

Q Walked in where?

8

A Into the back. A little while later the guy

9

came out without the boxes and left.

10

Q Had you seen that man before that time?

11

A No.

12

Q Do you know his name?

13

A No.

14

Q Mr. Barnaba, in this same period, this period

15

of time when you first went to the club and then kept

16

returning, during that period did you have any conver-

17

sation with Richard Forbrick?

18

A Yes, I did.

19

Q Will you please tell us what was said by you

20

and by him?

21

A He said to me he was worried about the money.

22

Q Where did this conversation take place?

23

A At the Boston Animal Hospital. He was

24

wondering what was happening, he was worried about

25

the money, he was concerned, he wanted his money back.

1 I said, "I'll let you know, to see if I can get the money
2 back."
3

4 I went to the club and I told Gigi about it,
5 "Richie is worried about his money, why don't you let me
6 bring him here, you tell him about the money and at the
7 same time you'll get to know who he is, this way you'll
8 know him, in case something happens to me, he'll have to
9 come here."

10 Q Was anybody else present when you had this
11 conversation?

12 A Butch Mamone was there.

13 Q What did Inglese say?

14 A Gigi didn't want to meet him.

15 Q Did he say that?

16 A He hesitated -- yes, he said it. Butchie
17 said he was all right, he said he knew his wife, he said
18 he was okay, there was nothing wrong with him.

19 Q Butch Mamone?

20 A Yes.

21 Q Said who was all right?

22 A Richie.

23 Q Forbrick?

24 A Yes.

25 Q Did he say how he knew Forbrick's wife?

1

hpa6

Barnaba-direct

1369

2

A That his wife and Richie's wife were good

3

friends.

4

Q Mamone's wife and Forbrick's wife?

5

A Yes.

6

Q Did there come a time during this period when

7

Forbrick came to the club?

8

A Yes, there did.

9

Q Were you with him?

10

A Yes.

11

Q Was the defendant Inglese there?

12

A Yes, he was.

13

Q Was there any conversation?

14

A I introduced him to him.

15

Q You introduced whom to whom?

16

A Forbrick to Gigi.

17

Q Was there a conversation?

18

A Yes.

19

Q What was said?

20

A Gigi told him, "Don't worry about the money,

21

it's all right." He assured him there was nothing wrong

22

Richie said, "All right." He said, "Wait

23

a few more days, don't worry about it."

24

We had a few drinks and we left.

25

Q That same evening did there come a time when

you went back to the club?

A Yes.

Q Did you see the defendant Inglese there?

A Yes.

Q Did you have a conversation with him?

A Yes.

Q What was said?

A I told him, I said, "If Richie should come on his own to get anything, don't give it to him, make sure it goes through me first."

He said, "All right, don't worry about it."

Q Was anyone else present at this conversation?

A Not that I recall.

Q Where did it take place in the club?

A By the car.

Q Mr. Barnaba, directing your attention to this same period of time when you were returning to the club, practically daily or daily, did there come a time when you saw a man --

MR. CURRAN: I will withdraw that.

Q Do you know a man named Ralph Tutino?

A Yes.

Q Do you know whether he has a nickname?

A Yes, I do.

1

hpa8

Barnaba-direct

1371

2

Q What is the nickname?

3

A The General.

4

Q The General?

5

A Yes.

6

Q Mr. Barnaba, directing your attention to the

7

same period of time, did you see The General at the club?

8

A Yes, I did.

9

Q Who else was present when you saw him?

10

A Gigi, Finnegan and myself were at the bar.

11

Q Together?

12

A Yes.

13

Q Were there other people in the club?

14

A Yes.

15

Q Was there any conversation that took place in-

16

volving The General at this time?

17

A Well, he was walking out, he was leaving the

18

place.

19

Q Tell us what was said as The General was leaving

20

and you were there with Gigi and Finnegan.

21

A He says, he hollered over to Gigi, "I'm leaving."

22

Gigi says, "Are you going to see this guy?"

23

"Yes," he says, "I'll see him. I'll see if

24

I can pull 12 packages off."

25

Q What did 12 packages mean to you?

1 hpal0 Barnaba-direct

2 or two-week period, did there come a time when you had
3 another conversation with Richard Forbrick?

4 A Yes, I did.

5 Q Please tell us what was said?

6 A He said he had to have the money back, he could
7 wait any longer.

8 Q What did you do or say?

9 A I said, "All right, "I'll go to the club and
10 see Gigi, I'll get the money back."

11 Q Did you go to the same club?

12 A I did.

13 Q The Wilkinson Avenue club?

14 A Yes.

15 Q Did you see the defendant Inglese?

16 A Yes, I did.

17 Q And what happened when you saw him?

18 A I told him Richie wanted the money back, he
19 didn't want to wait any longer.

20 He said, "All right, I'll give you the money."
21 He called his son-in-law, who was there at the time, a
22 fellow named Botti.

23 Q How do you spell that?

24 A B-o-t-t-i, I guess.

25 He said, "Go to my house and tell my wife to

hpall Barnaba-direct

give you a bag." He told him it was somewhere, I don't remember. He said, "Bring it here." And he left and he was back in about 20 minutes.

Q When you say he left, who left?

A Botti left.

Q And he returned?

A About 20 minutes.

Q What happened when he returned?

A With the bag, and he gave it to Gigi. Gigi gave it to me and he says, "You didn't have to worry about the money. It's the same money. I never touched it." And it was, it was the same money.

Q It was in the same bag?

A Yes.

Q And he gave it to you?

A Yes.

Q What did you do with it?

A I took it and brought it back to Richie.

Q Forbrick?

A Yes.

Q That's at the animal hospital?

A Right.

Q Mr. Barnaba, directing your attention to later in about the month of December, 1970, did you have

another conversation with Richard Forbrick?

A Yes, I did.

Q Will you please tell us what was said?

A He called me, like he always did, to go over.
He said he got to see me. I went over.

Q To the animal hospital?

A Yes. And he said that he needed a half a
kilo at that time.

Q Half a kilo of what?

A Heroin. He wanted to know if I could get
it. I said, "I know there is nothing around but I'll
try."

I called a friend of mine up, Tony Loria.

Q Can you spell the last name?

A L-o-r-i-a.

Q You called him how, by telephone?

A Yes, from Richie's place.

Q From the animal hospital?

A Yes.

Q About how long had you known Anthony Loria?

A Ten or 12 years, up to that time.

Q When you telephoned him did you reach him?

A Yes.

Q Did you have a conversation with him?

hpa

Barnaba-direct

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A Yes.

Q What was said?

A I said I wanted to see him. He said, "All right, come out." He gave me the time to be there, I think it was about 4 o'clock, and I got in my car and went out.

Q When you say went out, where did you go?

A He lives out in Long Island, Babylon.

A Babylon, Long Island.

A Yes.

Q You drove there?

A Yes.

Q Was anyone with you when you drove out?

A I was by myself.

Q Did you go to his house?

A Yes.

Q Did you see him?

A Yes.

Q Did you have a conversation with him?

A Yes.

MR. FISHER: If your Honor please, may I object to all the testimony with regard to Loria as testimony irrelevant and immaterial to the crimes charged in this indictment and, if anything, proof of an entirely different

1 hpa Barnaba-direct 1377--

2 conspiracy between this witness and Mr. Loria.

3 THE COURT: I understand your objection
4 and it will be a continuing objection. I will take it.
5 Do you have a question before the witness?

6 MR. CURRAN: I asked if he had a conversation
7 and the witness said yes.

8 THE COURT: All right, go ahead.

9 Q Please tell us what was said.

10 A I told him if he had any goods and he said yes,
11 he did. I said I needed a half, and he said, "It's
12 high," the price was high.

13 I said, "How much?"

14 He said, "30,000 a kilo."

15 Q Thirty thousand per kilogram?

16 A Yes.

17 I said, "I need a half."

18 He said, "Well, if you need it for yourself
19 to make money on I'll give it to you; but if you're going
20 to give it to somebody I wouldn't give it to you."

21 I said, "I need it for myself to make money."

22 He said, "You got to give me 15,000 for a half."

23 I said, "Allright, I'll pick up the money and
24 bring it back."

25 I stood a while, we talked and I left. I

1 hpa Barnaba-direct 1378
2 went back to Richie at the animal hospital. I told
3 Richie the price and I had to have the money. He
4 got it, and it was the next day I picked up the money.
5 Q You went back to the hospital the next day?
6 A Yes.
7 Q You picked up the money from Forbrick?
8 A Yes.
9 Q How much did you pick up?
10 A Seventeen thousand.
11 Q Was this in a bag?
12 A Yes, in a bag.
13 Q Did you see the bills?
14 A Yes.
15 Q What denominations?
16 A Small bills.
17 Q After you picked up the money the next day from
18 Forbrick what did you do?
19 A I called Loria and told him I was coming out.
20 He said, "All right, come out." I went out with the
21 money.
22 Q About what time did you go out to Loria's house?
23 A When I got there it was about 7, 7:30.
24 Q In the evening?
25 A Yes.

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Barnaba-direct

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Q Did you see him there?

A Yes, I did.

Q What happened?

A We counted out the money. I gave him the 15,000 and I took the 2000. He said, "I'll be right back, just wait. I waited at his house.

Q Was anyone else present with you?

A No, I was by myself.

Q What happened then?

A He left. He was back in about a half hour; 20 minutes, a half hour. He gave me the package.

I left, put it in my car and left, I went back to the animal hospital to Richie Forbrick. I brought it inside and I gave it to Richie.

Q Was this in a bag?

A Yes.

Q Did you look inside the bag?

A No.

Q You delivered the bag to Forbrick back at the animal hospital?

A Yes.

Q That same evening?

A Yes.

Q What happened then?

1 hpa

Barnaba-direct

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2 A We were in the back room talking and a car pulled
3 up with a woman driver and a guy. The guy got out
4 and came inside. Richie went out to see him. Maybe
5 five or ten minutes, the guy came back out. I was
6 watching from the window. He was on crutches and he
7 had the bag stuck in the crutch, on the bottom.
8 He went to the car, got in the car and left.

9 Q When you say the bag, Mr. Barnaba, what bag
10 are you talking about?

11 A The bag with the goods in it.

12 Q That you had brought from Loria?

13 A Yes.

14 Q When you gave the bag to Forbrick at the
15 hospital that evening, before this man appeared, did you
16 give him any money?

17 A I gave him \$1000.

18 Q And you kept a thousand?

19 A Right.

20 MR. CURRAN: May this be marked as Govern-
21 ment's Exhibit 61 for identification, please?

22 (Government's Exhibit 61 was marked for iden-
23 tification.)

24 Q Mr. Barnaba, I show you what has been marked
25 Government's Exhibit 61 for identification, a photograph,

hpa Barnaba-direct

and I ask you if you recognize that person in the photograph?

A Yes, I do.

Q Did you see that man on the evening about which you have just testified?

A Yes, that was the man.

Q Do you know that man's name?

A Yes, I do.

Q What is it?

A Paul Gregorio.

MR. CURRAN: I offer it in evidence, your Honor.

MR. FISHER: Objection. It is irrelevant.

THE COURT: First, I'll take a look at it. We're a few minutes early but we'll break for lunch.

Marshal, will you be good enough to take the jury out.

(The jury left the courtroom.)

(The witness left the courtroom.)

(Pause.)

THE COURT: All right, gentlemen. Mr.

Fisher, I think you objected on the grounds of relevancy.

Are there any other objections.

MR. FISHER: Yes, your Honor. I think the

bottom should be clipped on an even line too, your Honor.

THE COURT: So do I.

MR. ROSENBERG: That way the jury couldn't

speculate that there might have been a number there.

MR. CURRAN: We have no objection, your Honor.

There had been a number there.

THE COURT: All right. Government's Exhibit

61 will be received in evidence, but altered. You will

cut off the bottom and make it even.

(Government's Exhibit 61 was received in

evidence.)

THE COURT: Last evening Mr. Fisher made an

application for a witness to be produced during the lunch

break. Is he around?

MR. PHILLIPS: We just called my office,

your Honor, and he is on his way down from my office.

Your Honor, with respect to the tape natter

that has come up, I am prepared -- Mr. O'Boyle is here.

May I have an opportunity to talk to him before we

proceed?

1 jha

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2 MR. RICHMAN: I can't hear. I really can't
3 I didn't hear your Honor, I didn't hear Mr. Phillips.

4 THE COURT: All right. I will make sure
5 you can hear.

6 (Pause.)

7 MR. PHILLIPS: Does your Honor want Sergeant
8 O'Boyle on the witness stand?

9 THE COURT: Yes, I think so.

10 M A R T I N O ' B O Y L E, having been pre-
11 viously duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FISHER:

14 Q Mr. O'Boyle, thank you for coming.

15 Do you know a man named John Barnaba?

16 A Yes, I do.

17 Q When for the first time did you meet him?

18 A Early 1972.

19 Q You said December, is that right?

20 A That's correct.

21 Q At that time how were you employed?

22 A I was assigned to the Narcotics Division
23 of the Police Department, actually, the Sixth District
24 of the Narcotics Division.

25 Q At that time you were working on an investiga-

1 jha

O'Boyle-direct

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2 tion under the supervision of Frank Rogers and his
3 associates, is that right?

4 A I was assigned to supervise an investigation
5 by the chief of the Narcotics Division. I was under
6 his command.

7 Q Who was he?

8 A That was Chief Bonicum.

9 Q This investigation involved, among others,
10 Louis Inglese, is that right?

11 MR. PHILLIPS: Your Honor, I object to this.
12 O'Boyle was brought here to find out whether or not there
13 any additional reports, notes, memoranda regarding
14 debriefings of John Barnaba. This has turned into a
15 fishing expedition.

16 MR. FISHER: We have to know whether there
17 were conversations and if they related to this investi-
18 gation. That is what Mr. Phillips was objecting
19 about all day yesterday, your Honor.

20 THE COURT: Can't we cut it down and make
21 it short?

22 MR. FISHER:

23 Q Did the investigation you were working on
24 concern, among others, Louis Inglese?

25 MR. PHILLIPS: Objection.

1 jha

O'Boyle-direct

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2 THE COURT: What exactly is your objection?
3 All I want to do is find out if there are any more
4 tapes in the sergeant's possession which are connected
5 with this case.

6 MR. PHILLIPS: I would suggest that your
7 Honor pose that question to Sergeant O'Boyle and I
8 think we can shorten considerably this hearing.

9 THE COURT: All right. Are there?

10 THE WITNESS: To the best of my knowledge,
11 your Honor, there are no other tapes, memoranda, other
12 than what has been turned over to the United States
13 prosecutor.

14 Q What is that, Mr. O'Boyle?

15 THE COURT: Let me ask the questions, see
16 if we can make it shorter.

17 You have taken all the tapes and all the
18 memoranda that you had and turned them over to Mr. Phillips,
19 is that correct?

20 THE WITNESS: Yes, your Honor.

21 THE COURT: In connection with this case?

22 THE WITNESS: Yes, your Honor.

23 MR. FISHER: May I inquire, your Honor?

24 THE COURT: What do you want to inquire about?

25 MR. FISHER: I would like to know what tapes

1 jha

O'Boyle-direct

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2 he gave the government; I would like to know what notes
3 and memoranda he gave, because there has been precious
4 little of notes and memoranda of debriefings; I would like
5 to know if he was present when notes or memoranda were
6 made by anybody else of Mr. Barnaba during a debriefing
7 or an interview.

8 THE COURT: All right. Were there any
9 other notes or memoranda taken by somebody else during
10 any debriefings?

11 THE WITNESS: Yes, your Honor. A report
12 was made by Agent Shutes from the Federal -- the Task
13 Force, the Federal Task Force. I was present when he
14 interviewed Barnaba.

15 THE COURT: All right.

16 MR. PHILLIPS: That has been turned over
17 as well, your Honor.

18 THE COURT: All right. Mr. Phillips,
19 have you marked all the 3500 material in connection with
20 Barnaba?

21 MR. PHILLIPS: Yes, we have, your Honor.

22 THE COURT: Is there also a tape involved?

23 MR. PHILLIPS: Yes, there is, your Honor.

24 THE COURT: Do you have a copy of that
25 tape or a copy of the transcript? Do you have a copy

1 jha

O'Boyle-direct

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2 of the tape?

3 MR. PHILLIPS: A copy of the tape we would
4 like to have deemed as marked as the next 3500 exhibit
5 in order.

6 MR. CURRAN: Your Honor, I understand the
7 Barnaba material has been marked beginning with 3542
8 and I think it might help in the record if I could state
9 what those are very briefly.

10 THE COURT: That is what I want you to do.

11 MR. CURRAN: Government's Exhibit 3542, hand-
12 written notes of Special Agent Shutes entitled "Original
13 Debriefing of CI5124."

14 Government's Exhibit 3543, report of Agent
15 Shutes dated September 25, 1973, entitled "Interview of
16 Confidential Informant 5124."

17 THE COURT: Sergeant O'Boyle, those two
18 items did not come from you, right?

19 THE WITNESS: The report did not come from me
20 your Honor.

21 THE COURT: All right.

22 THE WITNESS: Neither did the tape.

23 THE COURT: All right. Go ahead.

24 MR. CURRAN: Government's Exhibit 3544 for
25 identification is report of Agent Shutes dated November

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O'Boyle-direct

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2 29, 1973, entitled "Further Debriefing of Confidential
3 Informant 5124."

4 Government's Exhibit 3545, grand jury testimony
5 of John Barnaba -- that is, the federal grand jury, your
6 Honor -- dated October 2, 1973. That consists of
7 pages 26 through 30, but that is the entire grand jury
8 testimony for that date.

9 Government's Exhibit 3546, grand jury testimony
10 of John Barnaba, federal grand jury, of December 5, 1973,
11 and this testimony is pages 6 through 12.

12 Government's Exhibit 3547 --

13 THE COURT: Again, is that the entire
14 testimony of that day?

15 MR. CURRAN: Yes, your Honor.

16 THE COURT: All right.

17 MR. CURRAN: Of John Barnaba.

18 THE COURT: Yes.

19 MR. CURRAN: Yes. Government's Exhibit
20 3547, grand jury testimony of Wallace Millard dated
21 October 3, 1973, one page.

22 THE COURT: Wallace Millard?

23 MR. CURRAN: He is a police officer, your
24 Honor. It has all been turned over to defense counsel
25 a week ago.

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O'Boyle-direct

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THE COURT: All right.

3

MR. CURRAN: Government's Exhibit 3548 is

4

state court grand jury testimony of John Barnaba dated

5

May 29, 1973, pages 30 through 40. The balance, your

6

Honor, which I would like to hand up to the court, that

7

is the full set, I would like to have marked 3548A.

8

That consists of the entire state court grand jury testi-

9

mony of John Barnaba, including pages 30 through 40.

10

Pages 30 through 40 have been turned over to defense

11

counsel some time ago. The balance has not. It

12

is being submitted to the court.

13

THE COURT: All right.

14

MR. CURRAN: The final item which has been

15

turned over to defense counsel, which I will have to get

16

another copy of, your Honor, I don't think I have one here

17

I will have to check -- would be 3549, and that is hand-

18

written notes of John Barnaba consisting of 33 pages.

19

I have a copy here, your Honor.

20

MR. ROSENBERG: What was the date on that,

21

Mr. Curran?

22

MR. CURRAN: I have no date on it.

23

THE COURT: I have a copy. Is this the

24

thing you are talking about?

25

MR. CURRAN: Yes, your Honor.

1 jha

O'Boyle-direct

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2 THE COURT: All right.

3 MR. CURRAN: In addition, all defense counsel
4 have received, your Honor, a copy of the FBI prior
5 criminal record sheet of John Barnaba. The handwritten
6 notes of Barnaba are now marked, your Honor, as 3549,
7 Government's Exhibit 3549 for identification.

8 THE COURT: All right. Sergeant O'Boyle,
9 did you bring over the tape recording of the debriefing
10 session of Mr. Barnaba?

11 THE WITNESS: I did, your Honor.

12 THE COURT: Do you have any other reports
13 in connection with this case about Mr. Barnaba, about
14 conversations you had with Barnaba?

15 THE WITNESS: No, your Honor.

16 THE COURT: All right. Step down.

17 MR. FISHER: If your Honor please. before
18 the witness steps down, I would urge, first of all,
19 that under United States against Desist he is a hostile
20 witness. I am entitled to cross examine him. I
21 am not bound by his answer, if your Honor please. I
22 have a right to inquire, No. 1, where the original notes,
23 if any, that became the substance of the two summary
24 conclusionary reports are, whether or not they have
25 been destroyed. I am entitled, I believe, to

1 jha

O'Boyle-direct

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2 inquire, your Honor about the strange coincidence that
3 there are 17 or more tapes of Mr. Stasi and there is just
4 one interview tape of the witness Barnaba.

5 I think I am allowed to inquire into these areas
6 I respectfully submit that the scope of inquiry by your
7 Honor has reduced this to a mere charade and a nullity.

8 THE COURT: It is hardly a charade or a
9 nullity. It gets down to the real question immediately,
10 without a lot of fencing.

11 MR. FISHER: It gets down to a representation
12 of the government, your Honor --

13 THE COURT: It gets down to sworn testimony
14 from the police officer that he doesn't have anything more.
15 How in the Lord's name can we ask the government to
16 produce anything more if they produce the witness who
17 says he doesn't have it?

18 MR. FISHER: If your Honor please --

19 THE COURT: As to cross examination of
20 this witness about the original notes of the two
21 reports, the reports are both on federal BND forms, Bureau
22 of Narcotics forms. They are signed by Torrey Shutes.
23 How do you expect to find out from a New York City
24 detective sergeant where Torrey Shutes put the original
25 notes?

MR. FISHER: I think Mr. O'Boyle --

THE COURT: That is pure speculation.

MR. FISHER: If I were permitted to inquire, your Honor, I think it would become clear that Mr. O'Boyle participated in the interviews of John Barnaba with Mr. Shutes.

THE COURT: He said he did. He said he was there. He saw Shutes take notes. What more can we do?

MR. FISHER: If he saw Shutes take notes maybe he saw what Shutes did with the notes that he took, your Honor.

I might submit this: Too often, specially in the past, has the government represented that there is no more 3500 material and fortunately the Court of Appeals reversed most recently in United States against Pacelli.

THE COURT: That is another case.

MR. FISHER: We are not bound by the representations --

THE COURT: I am sorried about this case, not about some other case.

Step down, Sergeant.

MRS. ROSNER: Your Honor, may I ask some

1 jha

O'Boyle-direct

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2 questions?

3 THE COURT: No.

4 MRS. ROSNER: May I just put the questions
5 for the record, Judge?

6 THE COURT: All right, go ahead.

7 CROSS EXAMINATION

8 BY MRS. ROSNER:

9 Q Sergeant, did you yourself deliver the
10 Barnaba debriefing tape which his Honor asked you about
11 and the other materials to some representative of the
12 federal government?

13 A I delivered the tape, but not the notes.

14 Q But not the report of Agent Shutes, is that
15 right?

16 A That's correct.

17 Q But did you also deliver, apart from the
18 debriefing tape, copies or perhaps the originals of the
19 several Kel transmissions which Barnaba had recorded?

20 A I delivered the Kel tapes or rerecordings of
21 the Kel tapes, yes.

22 Q Sergeant, when you did that did you
23 receive a receipt of any kind inventorying the materials
24 which had been turned over?

25 A I personally did not receive a receipt, but

1 jha

O'Boyle-cross

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2 somebody from my team may have.

3 Q Do you know who that someone is, Sergeant?

4 A No, I do not.

5 Q Were you accompanied by anyone on the
6 occasion when you delivered these materials?

7 A Well, I personally delivered certain tapes.
8 I directed members of my team to deliver other tapes?

9 Q Whom did you direct?

10 A Different officers at different times. I
11 don't recall exactly who.

12 Q To the best of your recollection, whom did you
13 direct at what time?

14 Let me withdraw that and ask you this: If
15 a receipt for the materials turned over to the federal
16 government existed, Sergeant, where would it be

17 kept? A It would be --

18 THE COURT: If you know.

19 A -- retained, possibly, one receipt should be
20 retained, in the tape room of the state prosecutor, 26
21 Federal Plaza.

22 Q Can you tell me which officer would be in
23 charge of that tape room?

24 A Yes. I believe his name is Mazzola, Joseph
25 Mazzola.

1 Q Let me ask you one other things, Sergeant.
2
3 You were engaged, were you not, in the debriefing
4 of the witness Barnaba, isn't that right, you were in-
5 volved in the process of debriefing?

6 -- -A I was present when he was debriefed.

7 Q Do you know whether subsequent to Barnabas
8 becoming a cooperating individual the tapes which he made,
9 the Kel transmissions to which you referred, were tran-
10 scribed by someone connected with your office?

11 A Prior to my entering this case in December of
12 1972 it is possible that tapes were made. I have no
13 direct knowledge of that.

14 Q Did you slip, did you mean to say transcripts?

15 A No, I did not slip.

16 Q Do you know whether transcripts were prepared
17 at the behest of the state prosecuting authorities, do
18 you have knowledge?

19 A I believe that some transcripts of some tapes
20 were prepared for a state case some time ago. But as
21 to what tapes were transcribed, I have no knowledge.

22 Q Do you know whether those transcripts were
23 among the papers turned over to the federal government?

24 A I have no knowledge of that.

25 Q With respect to an individual named Frank Stasi,

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O'Boyle-cross..

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2 officer, similarly, do you know whether the tapes which
3 were made in connection with his cooperation were
4 transcribed at the behest of the state prosecuting
5 authorities?

6 A I have no knowledge of that.

7 MRS. ROSNER: I have no other questions.
8 Thank you, your Honor.

9 THE COURT: All right. Step down.

10 MR. ROSENBAUM: Your Honor, one question.
11 Sergeant O'Boyle's name came up yesterday on my cross
12 examination of Officer Connelly.

13 CROSS EXAMINATION

14 BY MR. ROSENBAUM:

15 Q --- Sergeant O'Boyle, on May 30, 1973 did you re-
16 ceive certain Kel transmitters and receivers from Ser-
17 geant Connelly?

18 MR. PHILLIPS: Your Honor, I object to
19 this.

20 THE COURT: Sustained.

21 MR. ROSENBAUM: Your Honor, in order to
22 especite this matter, since Sergeant O'Boyle is here
23 now --

24 THE COURT: We will take it up in the usual
25 normal order. We are not going to take it up now.

All right. Step down.

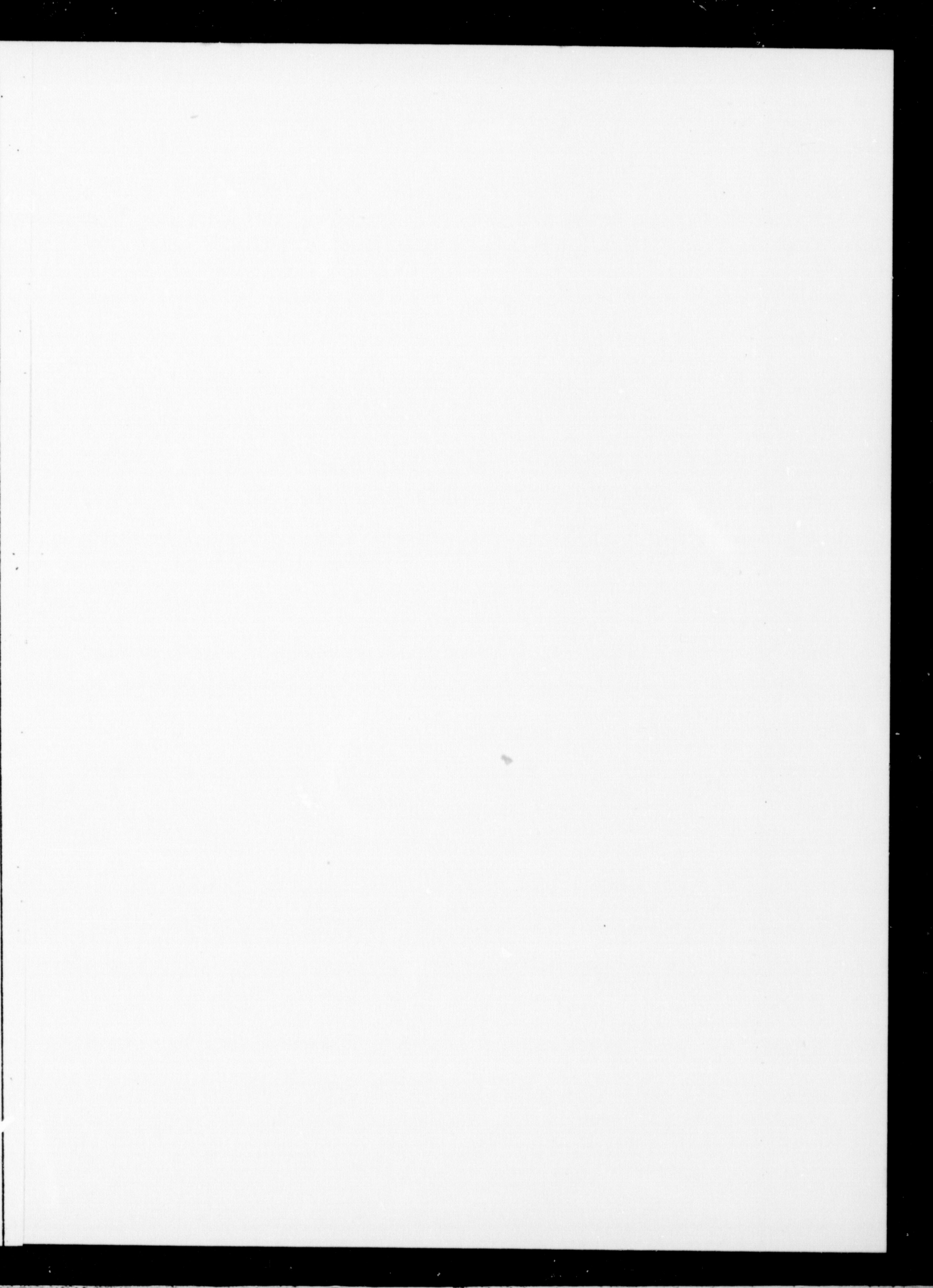
(Witness excused.)

MR. FISHER: If your Honor please, Mr. Miller has been kind enough to return to the courtroom. I think he is here pursuant to subpoena issued by Mrs. Rosner.

MR. PHILLIPS: Your Honor, may I state the government's position for the record with respect to the subpoena issued by Mrs. Rosner on Mr. Miller and the special narcotics prosecutor's office.

Just to go back in time, and as I indicated yesterday at the close of the session, the government made available the first week in January for listening by defense counsel and copying, if they so wished, certain reel-to-reel tapes that involved John Barnaba and Frank Stasi while Barnaba was working in an undercover capacity and prior to Stasi being arrested. The reason for making available at that time those tapes by the government was that the government had not yet concluded whether or not it was going to have either Stasi or Barnaba testify with respect to those transactions.

As your Honor heard Mr. Stasi's testimony, he did not testify with respect to those transactions on direct examination, and as your Honor will be able



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to conclude at the close of Barnaba's direct examination
he will not have testified on direct examination
with respect to those particular transactions.

So for that reason it is submitted thast
the tapes that were made available at that time by the
government are not 3500 material as to either Stasi or
Barnaba.

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2 With respect to tapes that Mr. Curran requested
3 about two weeks ago from the Special Prosecutor's office
4 which related to the same subject matter and transactions,
5 that is, Barnaba working in an undercover capacity and
6 Stasi prior to his arrest, those were delivered by the
7 Special Prosecutor's office to my office, in turn delivered
8 to your Honor's chambers. Your Honor then, having heard
9 them, concluded that they were not 3500 material as to
10 the witness Stasi and ordered that they be sealed for
11 appellate purposes.

12 After the subpoena was served yesterday by
13 I believe Mrs. Posner, I requested of your Honor to unseal
14 those particular tapes because of the fact that they also
15 related to John Barnaba. After your Honor ordered that
16 they be unsealed they were delivered to me and those tapes,
17 in addition to the tapes that had been made available but
18 that only Mrs. Everett of Mr. Ellis's office had listened to,
19 were turned over to Mr. Fisher and Mr. Oppenheimer from
20 Mrs. Rosner's office last night. A list of those was made.

21 It is our position, however, with respect to
22 all of those tapes, that they are not 3500 material.

23 Now, with respect to what I understand the
24 subpoena to cover, which is all tapes involving John,
25 Barnaba, it is the government's position that these are

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2 not 3500 material for the reason that they are not in
3 the possession, custody or control of the government
4 and never have been, for that matter, and we cite to
5 your Honor specifically the case of Beavers vs. United
6 States, 351 2d, at page 506, a Ninth Circuit case.

7 With respect to the subpoena that was served
8 on the Special Prosecutor's office for the production of
9 these tapes, the government takes no position.

10 Now, that disposes of everything with the
11 exception of one other item and that is certain trans-
12 cripts that were delivered to your Honor in camera I think
13 last week some time that relate to tape recordings of
14 a court-authorized wiretap involving Mr. Barnaba. I
15 understand or would assume that the subpoena served by
16 Mrs. Rosner would also request those transcripts and/or
17 the tapes. Again, the government takes no position with
18 respect to those items.

19 MR. FISHER: If your Honor please, with regard
20 to the arguments regarding the 3500 material, you have
21 heard from us too numerous times to recount.

22 THE COURT: Oh, yes.

23 MR. FISHER: We don't agree with Mr. Phillips'
24 narrow view of the section. Frankly, we don't need to
25 argue about it now --

1 hp3

2 MR. PHILLIPS: Mr. Fisher, I want to interrupt
3 you.

4 MR. FISHER: -- unless Mr. Miller takes a posi-
5 tion with regard to the subpoena.

6 THE COURT: Let's hear from Mr. Miller.

7 MR. PHILLIPS: May I just state further, your
8 Honor, with respect to the genesis of the case that is on
9 trial before you, that Mr. Barnaba was arrested by the
10 local authorities in November of 1972 pursuant to an
11 investigation that the Federal Government was in no way
12 involved in.

13 Subsequent to that time Mr. Barnaba, having
14 agreed to cooperate, went and met with certain individuals
15 and was at that time wired up, so to speak. During that
16 period of time the Federal Government was not involved
17 with Mr. Barnaba and for that matter was totally unaware
18 of who Mr. Barnaba was.

19 In May of 1973 Frank Stasi was arrested and
20 the only undercover capacity that he acted in was when he
21 went and met with Mr. Lentini and Mr. D'Amico. At that
22 time he was wired up. The Federal Government did not
23 in any way participate or was not involved with respect
24 to that particular transaction.

25 Subsequent to that, in July, as your Honor has

1 hp4

2 gathered from the debriefing tapes, Mr. Stasi was debriefed.
3 No member of the Federal Government participated in that
4 debriefing. In fact, as I think was indicated from the
5 redirect examination of Mr. Stasi, the first time any
6 member of the Federal Government came into contact with
7 Mr. Stasi was on July 23rd, when Assistant United States
8 Attorney Jerry Feffer met with Mr. Stasi. At that time
9 they talked not about this case, but about the Zanfardino
10 case, which at that time was on trial and of which Mr. Feffer
11 was in charge.

12 The next individual from the Federal Government
13 to meet Mr. Stasi was myself in September of 1973 and
14 after that Agent Torrey Shutes in the middle of September.

15 With respect to Barnaba, no member of the
16 Federal Government at any time spoke to or was involved
17 in the investigation involving Barnaba. In fact, the first
18 time that Barnaba was spoken to was by myself in September,
19 the middle of September, 1973.

20 So we submit that the matter that is subject
21 to the subpoena which is requesting any tapes that Barnaba
22 appears on, any undercover tapes or any situations where
23 Barnaba was acting in an undercover capacity, the Federal
24 Government not only did not participate in but had no
25 knowledge of it.

1 hp5

2 MRS. ROSNER: Your Honor, so that the record
3 does not by silence indicate an adoptive admission,
4 we strongly oppose Mr. Phillips' contention that the
5 matters which were turned over last night were made
6 available at any time prior to yesterday, your Honor.

7 THE COURT: I understand.

8 MR. ELLIS: Your Honor, I have already identified
9 the four tapes that I have heard.

10 THE COURT: That is in the record.

11 MR. FISHER: May we hear from Mr. Miller,
12 your Honor?

13 THE COURT: Yes. Where is he?

14 MR. FISHER: Right here.

15 THE COURT: I assume your office has a posi-
16 tion.

17 MR. MILLER: Yes, your Honor.

18 THE COURT: Does anybody have a copy of the
19 subpoena?

20 MR. RICHMAN: Your Honor, may the defendants
21 be excused?

22 THE COURT: Yes.

23 Mr. Miller, do you have a position to take?

24 MR. MILLER: I do have a position to take.

25 THE COURT: All right. Let's hear it.

1 hp6

2 MR. MILLER: If I may, in a sort of a narrative
3 fashion, I would like to explain what has taken place
4 perhaps over the last few months and what types of
5 recordings we are speaking about when we are talking
6 about all recordings made with respect to John Barnaba.

7 If I may, your Honor, early in the Spring of
8 1972 the New York City Police Department had an investiga-
9 tion which basically was centered around Bronx County and
10 the upper part of New York County. During that investiga-
11 tion an undercover police officer happened to come in
12 contact with a person by the name of John Barnaba.

13 There were several narcotics transactions in
14 the spring of which John Barnaba was peripherally a part.
15 Some of the conversations that took place between the
16 undercover officers and informant John Barnaba and other
17 individuals were taped.

2 18 There came a time in the latter part of the
19 summer, I believe, about the middle of August, when our
20 office applied for an eavesdropping order with respect
21 to the home telephone of John Barnaba. The order was
22 granted and it was extended twice, if I am not mistaken,
23 through the months of September and October. So there
24 are three months of wiretap recordings of John Barnaba's
25 home telephone and obviously most of those have to do with

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2 him alone.

3 In November Mr. Barnaba was brought down to Mr.
4 Rogers' office and he agreed to cooperate at that time.
5 From November until the summer of this past year Mr.
6 Barnaba met with a great many people and there were very
7 many conversations recorded of which he was a party.

8 Around the late part of January and February he
9 happened to meet with Mr. Stasi, among other people,
10 and there were conversations between Mr. Barnaba and Mr.
11 Stasi and a great many people with respect to narcotics.

12 Then there came a time when in the opinion
13 of the District Attorney's office, Mr. Rogers and the
14 police officers John Barnaba could no longer work on the
15 street in safety and at that time, this past summer, I
16 believe, the U.S. Attorney's office and several federal
17 agents had an opportunity to speak to him, and those
18 conversations took place. There was obviously one debrief-
19 ing tape of Mr. Barnaba which Mr. Rogers, myself, and I
20 believe a Captain Littlejohn from the Narcotics Division.

21 If I could just break down into six categories
22 what types of conversations there are with respect to
23 Mr. Barnaba I think it would clear things up.

24 There is only one debriefing tape, which is
25 the tape made in November, when Mr. Rogers was there and

1 hp8

2 when I was there.

3 There are tapes involving John Barnaba, which
4 would be the second category in conversation with
5 defendants in this particular case.

6 There are tapes involving John Barnaba in
7 conversation with other people, those conversations
8 being narcotics conversations. However, those people are
9 not defendants in this case.

10 There are 11 reels of conversations which were
11 made during the execution of the wiretap, which would be
12 the fourth category.

13 THE COURT: That wiretap is the stuff I have
14 right now, is that right?

15 MR. MILLER: Yes, that's correct, your Honor.

16 THE COURT: All right.

17 MR. MILLER: My fifth category actually was
18 not a recording, but it was grand jury minutes of Mr.
19 Barnaba before a State grand jury.

20 The last category would be certain conversations
21 made prior to the wiretap, where undercover officers and
22 informants spoke to Mr. Barnaba. Those conversations
23 were recorded. For the most part, those conversations
24 formed the probable cause which the State used to apply
25 for the eavesdropping order.

1 hp9

2 Now, if I may, your Honor, quite a while ago --
3 by quite a while ago, I say at least in excess of four
4 or five weeks, anyway -- a copy of the debriefing tape with
5 Mr. Rogers was turned over to the U.S. Attorney's office
6 and about that same time all the tapes involving Mr.
7 Barnaba and defendants were turned over to the U.S.
8 Attorney's office or copies were turned over.

9 Subsequently we received a request from Mr.
10 Curran saying that to be on the safe side it would be best
11 if he had all of the tapes of John Barnaba with respect to
12 any people talking about narcotics during the time that
13 he was cooperating and so Sergeant O'Boyle's team came
14 back to the office and they spent another week trying to
15 make copies of all of those conversations. Now, that
16 was just a short while ago, I believe a couple of weeks
17 ago, two weeks ago, one week ago.

18 If I am not mistaken, my records show that all
19 except for three of those conversations were turned over,
20 and the reason the other three weren't turned over was
21 there were some technical difficulties in rerecording the
22 conversations because the machine didn't work properly
23 originally, something like that, and in any event, there
24 was another machine used at the same time, so the actual
25 conversation was turned over, although both tapes were

1 hp10
2 not turned over.

3 With respect to the wiretap, I am sure the Court
4 realizes that under New York State law we are required to
5 seal the original tape recordings for a period of ten
6 years and have been directed to do so by a New York State
7 justice. Those original reels are presently in the District
8 Attorney's office under seal. Your Honor has my complete
9 copy of all the transcripts made during that wiretap
10 order, which are some 780 typewritten pages.

11 THE COURT: It seemed more like a thousand
12 when I read them. Go ahead.

13 MR. MILLER: With respect to the grand jury
14 minutes, your Honor, those were turned over to the U.S.
15 Attorney's office.

16 The only other thing left, I suppose, to speak
17 about are the tape recordings made prior to the time that
18 the wiretap went into effect in August of 1972.

19 Now, I am familiar with all of those conversation
20 and I don't know of any conversations taped at that time
21 where any of the defendants in this case were parties.
22 I am not totally familiar with the federal indictment,
23 but I believe that there are some co-conspirators men-
24 tioned in the indictment who may be parties to some of
25 those conversations. There are definitely no defendants

1 hp11

2 who are parties.

3 The subpoena that Mrs. Rosner gave us yesterday
4 is rather sweeping and it includes all of those things.

5 Now, our office would be more than happy to cooperate
6 with the Court in any way that the Court sees fit.

7 The only reservation that I have at the moment is that we
8 do have an obligation to safeguard the original tape
9 recordings, especially the wiretap tape recordings, for
10 a period of ten years. So that if your Honor feels
11 that it is necessary, we could apply for an order in the
12 State Court, have the things unsealed, and make them
13 available to defense attorneys in our office whenever
14 your Honor says it should be done.

15 THE COURT: All right. Come up a minute,
16 Mr. Miller.

17 I found this Xerox copy of what looks like a
18 diary on the bench yesterday. Is that your diary?

19 MR. MILLER: Yes.

20 THE COURT: It will be marked Court's Exhibit 56
21 and sealed.

xx 22 (Court's Exhibit 56 marked for
23 identification.)

24 THE COURT: All right. I think I have everyone's
25 position in this matter, including all of the six cate-

1 hpl2

2 gories of things.

3 MRS. ROSNER: Your Honor, I have just a few
4 brief questions which I would like to put to Mr. Miller.
5 I want to thank him for his cooperation in responding
6 to the subpoena, I am sure at expense to his own work
7 schedule this morning. May I ask just a few questions?
8 They needn't be under oath, your Honor.

3 9 THE COURT: All right.

10 MR. MILLER: If I may, just one other thing,
11 your Honor.

12 The subpoena does talk about transcripts.
13 While I was preparing for several state cases I did ask
14 for some transcripts to be made. In my office at the
15 present time I happen to have ten transcripts of various
16 tapes, six of which refer to Mr. Barnaba or six of which
17 Mr. Barnaba is a party to the conversation.

18 I have no objection to turning them over to
19 counsel. It's just that they are my only copies and they
20 are originals. I would just like them to be safeguarded.

21 MRS. ROSNER: That was one of the things I was
22 going to inquire about, your Honor. It would certainly
23 save defense counsel a lot of time in preparing these.

24 There is one other question I would like to put,
25 your Honor. I would ask Mr. Miller to look at a three-

1 hpl3

2 page document which received a Court's exhibit number
3 yesterday, Court's Exhibit 55, and to examine the document
4 and determine whether anything turned over to the Federal
5 Government in the way of tape recordings is not reflected
6 on that list.

7 MR. MILLER: It would take me a while to do that,
8 your Honor.

9 THE COURT: It will take you quite a while.
10 It's three pages.

11 MR. PHILLIPS: I might be able to help a little
12 bit if I have an opportunity to speak with Mr. Miller.

13 MRS. ROSNER: I would just put one other
14 question, your Honor, which may solve the matter.

15 THE COURT: Go ahead.

16 MRS. ROSNER: Mr. Miller, do you have a receipt
17 for the tapes and papers which were turned over to the
18 Federal Government?

19 MR. MILLER: I don't have it personally, no.

20 MRS. ROSNER: Is it within your custody and control,
21 so that it could be produced for the Court?

22 MR. MILLER: No. It was my understanding that
23 a receipt would be asked for by the police officers who
24 came over to our office, requested that all the copies
25 be made, and then delivered them as soon as they could be

1 hpl4

2 made, which is over a period of several weeks, to the U.S.
3 Attorney's office.

4 Whether there is a copy in our office, I honestly
5 don't know. I never had anything to do with actually
6 transcribing tapes or carrying them across the street or
7 anything like that.

8 THE COURT: All right. Look, it's going to
9 take you time to take a look at that Exhibit 55. Look at
10 it and give your answer to Mr. Phillips and Mrs. Rosner
11 and they will represent what your answer is.

12 MRS. ROSNER: Thank you, Judge. That is the end
13 of my inquiry, your Honor.

14 MR. MILLER: Thank you very much, your Honor.

15 THE COURT: All right. Two o'clock, gentlemen.

16 (Luncheon recess.)
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2 A F T E R N O O N S E S S I O N

3 2.25 P.M.

4 (Jury present.)

5 THE COURT: I noticed it is snowing quite hard.
6 It is my understanding, checking with the Weather Bureau
7 people, there is a possibility of -- I forget exactly how
8 they phrase it -- major snowstorm. Under the circum-
9 stances, a lot of people here have to come from fairly
10 long distances. We will not be sitting tomorrow. If
11 we have a major snowstorm, I guess I will spend my morning
12 shovelling out the driveway.

13 MR. PHILLIPS: Your Honor, may we be heard on
14 that subject at the side bar.

15 THE COURT: Yes.

16 (At the side bar.)

17 MR. PHILLIPS: Your Honor, aside from the
18 weather problems, the government urges that we sit Saturday
19 for the following reasons: your Honor having indicated
20 we would sit Saturday, as I understand it, and then a new
21 lawyer has come into the picture. Obviously, Mr. Barnaba's
22 direct won't be finished and cross-examination won't be
23 finished today. Mr. Barnaba is in no way going to mention
24 Mr. Salley and in view of the fact we didn't sit Wednesday,
25 or maybe two and a half hours yesterday, and we had not

1 hpp2

2 been sitting the hours during the week, I urge we sat
3 Saturday. The government's case is coming in dribs and
4 drabs, and it seems to me the least we could do is leave
5 it up to the jury to sit Saturday. With respect to
6 the weather problems, even if we don't get started at 10
7 o'clock, I think counsel can be here.

8 THE COURT: Overruled.

9 (In open court.)

10 THE COURT: Mr. Barnaba, you are still under
11 oath.

12 MR. CURRAN: Your Honor, while questioning
13 Mr. Barnaba, may I hand Government's Exhibit 61 in evidence
14 to the jury, for examination?

15 THE COURT: Yes.

16 J O H N B A R N A B A , resumed.

17 DIPLECT EXAMINATION CONTINUED

18 BY MR. CURRAN:

19 Q Mr. Barnaba, I believe you last testified you
20 saw a man whose photograph you have identified as Govern-
21 ment's Exhibit 61, Paul Gregorio, leaving the hospital
22 with the aid of crutches.

23 A Yes, sir.

24 Q And --

25 THE COURT: Leaving the animal hospital.

1 hpp3

Barnaba-direct

2 MR. CURRAN: Yes, the animal hospital.

3 Q And carrying in one of the crutches a bag of
4 heroin?

5 A Yes.

6 Q Directing your attention to just before --

7 MR. ELLIS: Objection, your Honor. He didn't
8 know what was in that bag.9 THE COURT: Go ahead. He picked up a bag,
10 and delivered it to Richie and then he saw a man on
11 crutches whom he identified as the person in the picture,
12 leaving the hospital, the animal hospital. All right,
13 go ahead.14 Q Directing your attention to a short time before
15 this event, Mr. Barnaba, did you see the same man whom
16 you have identified as Paul Gregorio?

17 A Yes.

18 Q Where did you see him?

19 A At the animal hospital.

20 Q What happened on that occasion?

21 A One night while I was there with Richie --

22 Q Speak up, please, Mr. Barnaba.

23 THE COURT: He said one night while he was
24 there with Richie. Do you know what date that was?

25 THE WITNESS: No, I don't.

1 hpp4

Barnaba-direct

2 THE COURT: It was shortly before the time you
3 saw him walk out on crutches?

4 THE WITNESS: Yes, sir.

5 A A car pulled up in the driveway of the animal
6 hospital, and a woman came inside and told Richie to go
7 outside. He went out, Richie, and stood out a while
8 and I noticed the guy laying in the car. When Richie came
9 back in, he says that it was Paulie The Arrow.

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Q Paulie the Arrow?

A Yes, that he was shot in the knee and the wife wanted Richie to doctor him up, wanted to know if he could doctor him up.

MR. FISHER: Your Honor please, I object to the receipt of the testimony as against the defendant Finnegan. I ask the court for severance and a declaration of mistrial.

THE COURT: Motion denied.

MRS. ROSNER: I join in the motion.

THE COURT: Motion denied.

Ladies and gentlemen, I talked to you before about taking something subject to connection. I am going to go through it all completely and in great detail when the proper time comes. Keep an open mind.

All right, go ahead.

Q Mr. Barnaba, do you know a man named Frank Pugliese?

A Yes, I do.

Q Do you know whether Frank Pugliese has a nickname?

A Yes, I do.

Q What is that nickname?

A Butchie.

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Barnaba-direct

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Q Would you please look around the courtroom, Mr. Barnaba, and tell us if you see Frank Butch Pugliese in the courtroom?

A Yes, I do.

Q Would you please stand up and point him out?

A The fourth down from the left, with the beard and the moustache.

MR. CURRAN: Your Honor, may the record show --

THE COURT: He is identified.

MR. ELLIS: Your Honor, at this time I am going to object to the use of the nickname. The witness testified he knows Pugliese's real name. There is no need for the use of the nickname whatever.

THE COURT: No, I will take it.

Q Mr. Barnaba, jumping ahead in time to about the summer of 1971, did you have a conversation with Butch Pugliese, the defendant here, about Paulie the Arrow?

A Yes, I did.

Q Will you please tell us what you said, or what he said and what you said in this conversation?

A I happened to mention The Arrow, and Butchie said that he knew him, and that he had shot him in the knee up a colored guy's house by the name of Hank.

MR. SIEGEL: Objection, your Honor. May

I have a side bar at this time?

THE COURT: All right, come on.

MR. FISHER: I hope the record will reflect the objection I made a few moments ago.

THE COURT: Yes.

(At the side bar.)

THE COURT: I have a very inventive mind. Generally I can figure out what the objection is, but I am at a loss now.

MR. SIEGEL: Your Honor, if it may please the court, I have reason to believe testimony would be elicited from this witness describing an alleged shooting occurring at my client's house and I therefore ask limiting instructions as far as my client's involvement in this shooting and possible criminal penalties for being involved in an assault of this nature.

MR. CURRAN: Your Honor, at this time I simply intend to develop the Pugliese part of the conversation in the summer of 1971 without at this time, I believe, any further reference to the defendant Springer. There is a possibility that the witness will give some more detail, but I don't anticipate it will be much, if any.

Can we await the outcome of the entire

1 hpa

Barnaba-direct

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2 transaction?

3 THE COURT: Yes.

4 (In open court.)

5 MR. ROSENBAUM: If your Honor please, may
6 I just request when the witness or Mr. Curran uses the
7 name Butch as an alias, if that is going to be used,
8 that the last name be used.

9 THE COURT: Sure. I have three sons and
10 a daughter and my No. 2 son I always refer to as Butch.
11 BY MR. CURRAN:

12 Q Mr. Barnaba, will you tell us, please, at this
13 conversation with Butch Pugliese in the summer of 1971
14 what was said?

15 A What was said?

16 Q Yes. Please tell us.

17 A Well, he said The Arrow was a customer of his
18 and that he knew him and that he had shot him in the knee
19 because he owed him money up at this colored guy's house
20 by the name of Hank, that he went to shoot him in the
21 head but he fell back, lifted up his leg, his knee come
22 up to his head, and that's how he shot him in the knee.

23 Q This is Butch Pugliese telling you?

24 A Yes, sir.

25 Q Did Butch Pugliese say what the money The

1 hpa

Barnaba-direct

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2 Arrow was owed to him for?

3 A Well, for narcotics.

4 Q Did he say that?

5 A Well, he said he was a customer of his.

6 MR. ROSENBERG: I ask that be stricken,
7 if your Honor please.

8 THE COURT: Yes, I will grant it.

9 Ladies and gentlemen, what somebody assumes
10 is not evidence. Evidence is a retelling of what
11 somebody said or whatever happened.

12 All right, Mr. Curran. Go ahead.

13 Q Mr. Barnaba, I am going back to after this
14 transaction where you received heroin from Mr. Loria from
15 Babylon, coming now into the year 1971, directing your
16 attention to the month of about May of 1971. At this
17 time were you employed?

18 A Yes.

19 Q Legitimately?

20 A Yes. I was working as a used' car salesman.

21 Q Where were you working?

22 A At Jimmy's Used Cars on Boston Road and Gunhill
23 Road.

24 Q That is in the Bronx?

25 A In the Bronx.

1 hpa

Barnaba-direct

1422

2 Q Directing your attention to about the month
3 of May or June of 1971, were you working there then?

4 A Yes, sir.

5 Q Did there come a time when a man came to visit
6 you at the lot?

7 A Yes, there did.

8 Q Will you please tell us what happened on that
9 visit?

10 A A colored guy came by the name of Burke with
11 a yellow Eldorado Cadillac, Pennsylvania plates on it.
12 He came on the lot, he asked to see me.

13 Q Did you talk with him?

14 A Yes. When I went to talk to him he says that
15 he wanted an eighth of heroin.

16 I says, "I don't know you. Who sent you to
17 me?"

18 He said that Richie Forbrick sent him.

19 So I said, "Well, wait a minute. You know,
20 I want to check it."

21 I got on the phone and called Richie.

22 Q Called Forbrick?

23 A Yes. And Forbrick said he was all right,
24 he sent him down, that he was okay.

25 We talked. He told me he was staying at the

1 jha

Barnaba-direct

1423

2 Town and Country Motel, that he needed the eighth and if
3 I could get it for him.

4 I says to meet me there the following day and
5 I would let him know, with the money. I says, "Bring
6 3000 with you tomorrow and I'll let you know."

7 Q Where were you supposed to meet the following
8 day?

9 A On the lot.

10 Q At the used car lot?

11 A Yes.

12 Q What happened then?

13 A I left the lot that afternoon, I went to the
14 Beach Rose Club to see Gigi.

15 Q That is the same club that you testified
16 about?

17 A Yes, sir.

18 Q Did you see the defendant Inglese there?

19 A I did.

20 Q Did you have a conversation with him?

21 A Yes, I did.

22 Q Please tell us what was said.

23 A I asked him if he could give me an eighth.
24 He said no, he didn't have an eighth, but that he would
25 give me an ounce of pure and three ounces of mannite to

1 jha

Barnaba-direct

1424

2 make an eighth with for \$2000.

3 Q What did you say?

4 A I said all right, I would take it, that I
5 would be there the following day with the money to pick
6 it up, the following afternoon, and I left. The
7 following afternoon I met Burke again at the lot. I
8 told him, "Okay, give me the money," and I told him to
9 be there the next day and I took the money and went back
10 to the Beach Rose Club to see Gigi. I gave him 2000.
11 It was wrapped in -- folded up with a rubberband around
12 it.

13 Q You are talking about the money, Mr. Barnaba?

14 A Yes.

15 Q What did you do with the other thousand?

16 A I kept it. That was mine. And we
17 went inside the club and Gigi gave me the bag with the
18 ounce of pure and three ounces of mannite in it.

19 I took it home and I mixed it in my bathroom.

20 Q You mixed what now?

21 A The mannite together with the heroin.

22 Q Had they come to you separately or in the
23 same bag or how?

24 A In the same bag but separately.

25 Q Separate packages?

1 jha

Barnaba-direct

1425

2 A The mannite was in one bag and the heroin was
3 in another, a plastic bag.

4 I held it at my house that night. The
5 next day I took it with me on the lot and I put it in one
6 of the cars on the lot under the seat.

7 Q In one of the used cars?

8 A Yes. When Burke came I told him not to let
9 Jimmy, the owner, know what was going on, to make believe
10 he was looking to buy a car, and I took him to two or three
11 different cars, showing that I am demonstrating cars to
12 him.

13 When I got to the car where the package was
14 in it I told him, "This is the car. It's under the
15 seat. Take it and put it in your pocket," which he did.
16 He picked it up and he left.

17 A few days later I had gone somewhere from the
18 lot. When I got back Jimmy says two colored guys were
19 there looking for me, that they had put a gun to his head,
20 they wanted to know where I lived. He said, "What
21 happened?"

22 I said, "Don't worry about it." I said,
23 "I'll straighten it out." And I left.

24 Q You left the lot?

25 A Yes.

1 jha

Barnaba-direct

1426

2 Q What did you do then?

3 A I went home. I didn't go back to the lot
4 any more.

5 I called up Burke at the Town and Country.
6 I said, "You want to see me? What's the trouble?"

7 He said, "Well, that garbage you gave me
8 was no good." He says, "Waht my money back."

9 I says, "Well, where is the package?"

10 He said, "I threw it down the toilet bowl."

11 I said, "Well, then you own it. Forget about
12 it." And I hung up the phone.

13 A few days after that he showed up at my house
14 looking for me. I wasn't home.

15 When I got home that night my wife says they
16 were there, you know, mad, looking for me, causing a
17 ruckus. So I took my wife and kids and I took them
18 out of the house. I took them to my mother's to
19 stay there while I straightened this out.

20 Q Did you straighten it out?

21 A Eventually, yes.

22 Q Tell us what happened?

23 A Well, I went to tell Gigi about it and I told
24 him what the guy said.

25 Q Where did you see Gigi?

1 jha

Barnaba-direct

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2 A At the club, Beach Rose. He said that "The
3 guy is lying, forget about it. There is nothing you
4 can do about it," and he says, "Drop back, if I can find
5 out who he is, maybe I can do something, I'll let you
6 know."

7 On one of the days that I was there talking
8 about it --

9 Q With whom?

10 A With Gigi -- Butch Mamone says he knew the
11 guy. He overheard the conversation.

12 Q He overheard your conversation with Gigi?

13 A Yes. And that the guy was a customer of his,
14 he knew him, and that he owed him 25 or 30 thousand dol-
15 lars.

16 Q Who owed whom?

17 A Burke owed Butch Mamone.

18 Q Mamone said this?

19 A Yes. And that he would try to straighten
20 it out for me.

21 So I says, "Well, he's not here. I think he
22 left. You know how to get in touch with him?"

23 He says, "I have his number. I know how to
24 get him."

25 Two or three days later I had an appointment

2 with Mamone. I met him.

3 Q Where did you meet him?

4 A At the Beach, Rose Social Club, outside.

5 Q Outside the club?

6 A Yes. We were talking.

7 Q When approximately would you put this meeting,
8 in what month, if you know?

9 A Some time in August, July or August.

10 Butch said he had talked to Burke and he
11 straightened it out. He says he told him to deduct the
12 3000 from the money he owed him and that I owed it to
13 Butch.

14 THE COURT: Here you are referring to Butch
15 Mamone, is that right?

16 THE WITNESS: Yes.

17 THE COURT: All right.

18 A I said, "Okay. I don't see how you
19 straightened it out. I'm stuck, I got to come up with
20 \$3000."

21 He said, "Well, he deducted it."

22 I says, "All right, and I left. But I
23 never gave him the money.

24 Q Mr. Barnaba, I show you six photographs which
25 have been received in evidence as Government's Exhibits

1 jha

Barnaba-direct

1429

2 20 and 20A through E and I ask you if you recognize the
3 two people depicted in those photographs.

4 A That's myself and Butch Mamone.

5 Q Do you recognize the setting of those photo-
6 graphs?

7 A Yes. It's outside the Beach Rose Social Club

8 Q Do you recall when these pictures took place,
9 when the events portrayed in them took place?

10 A Well, this was while I was having the conver-
11 sation with Butch Mamone.

12 Q Is that the conversation about which you have
13 just testified?

14 A Yes, sir.

15 MR. CURRAN: Your Honor, may I make these
16 photographs available to the jury in case they want to
17 look at them?

18 THE COURT: Yes, sure.

19 MR. CURRAN: Thank you, your Honor.

20 Q Mr. Barnaba, directing your attention to
21 about the same period of time, in about the month of
22 July or August of 1971, did you have occasion to meet
23 Frank Butch Pugliese?

24 A Yes, I did.

25 Q Where did you meet him this time?

jha

Barnaba-direct

1430

A Outside the Beach Rose Social Club.

Q Did you have a conversation with him?

A Yes, I did.

Q Had you previously met Butch Pugliese?

A Yes, a few times before that.

Q When do you recall last seeing him before this meeting?

A A week or two before, probably.

Q Did you have a conversation with him at this time?

A When I met him by the Beach Rose Club?

Q Yes.

A Yes, I did.

Q Will you please tell us what you said and what he said?

A He said, "How you doing?" general conversation. I said I'm not doing too good, I was doing bad. I says, "Is there anything you can do?"

Well, he said, "Meet me tomorrow by Izzy's," he says, "and we'll get together."

I says, "All right."

The next afternoon I met him at Izzy's. That's a luncheonette on Buhre Avenue and Westchester Avenue.

jha Barnaba-direct

1431

Q In the Bronx?

A Yes. And we got in my car and we went to --
he took me to a colored fellow, Hank's house. He
blew the horn. He came down. He introduced me to
him.

Q Who introduced you to whom, Mr. Barnaba?

A Butchie introduced me to Hank.

Q This is Butchie Pugliese?

A Yes, sir.

Q Stop right there, Mr. Barnaba, and I will ask
you if you see the man whom you refer to in your
testimony as Hank in the courtroom.

A Yes, I do.

Q Will you please identify him by pointing to
him.

A Over here, with the moustache, on Ben Tolopka's
left -- right.

MR. CURRAN: Your Honor, may the record show
the witness has identified the defendant Springer.

THE COURT: Yes.

hpl Barnaba-direct

2B 2 Q Where did you go with Butch Pugliese, where
3 was this location?

4 A Well, it was at Hank's house. We were at the
5 house. We pulled around the corner and parked.

6 Q Where is Hank's house?

7 A He is on the service road of the New England
8 Expressway, near the 233rd Street exit.

9 Q You pulled around the corner, you say?

10 A Yes.

11 Q Was Hank with you?

12 A Yes, he was in the car.

13 Q And Butch Pugliese?

14 A Yes, sir.

15 Q Just the three of you?

16 A Yes.

17 Q Was there a conversation there?

18 A Yes, there was.

19 Q Please tell us what was said.

20 A Butchie told him that from on if he needed any-
21 thing to get it from me.

22 Q Did anything else happen?

23 A I asked Hank for his phone number. He says he
24 didn't have a phone, he didn't use phones in the house.
25 So I gave him my number. We dropped him back at the house

1 hp2 Barnaba-direct

2 and we left.

3 Q Directing your attention, Mr. Barnaba, to a
4 short period of time later, did you hear from Butch
5 Pugliese?

6 A Yes, I did.

7 Q How did you hear from him?

8 A Well, we had an appointment I think for the
9 following day or two days later to meet at Izzie's.

10 Q That is the luncheonette.

11 A Yes, on Brewer Avenue. At that time I met
12 Harry and Patty, two friends of his.

13 Q This is at Izzie's?

14 A Yes.

15 Q How did you meet Patty and Harry? Were they
16 introduced to you?

17 A Yes.

18 Q By whom?

19 A By Butchie.

20 Q Had you met Patty or Harry before?

21 A No, sir.

22 THE COURT: The person introducing you was Butch
23 Pugliese, right?

24 THE WITNESS: Yes, your Honor.

25 MR. ROSENBERG: Your Honor, can we have a time

1 hp3 Barnaba-direct

2 on this also?

3 THE COURT: Yes. Can you fix a date for this?

4 THE WITNESS: A date, your Honor?

5 THE COURT: Yes.

6 THE WITNESS: I can't fix a date, but I can
7 fix a month.

8 THE COURT: All right. Give us the month.

9 THE WITNESS: Well, August, the beginning of
10 August.

11 MR. DOWD: Can we have the year, your Honor?

12 THE WITNESS: '71.

13 Q Was there a conversation after you were introduced
14 to Patty and Harry?

15 A Yes, there was.

16 Q Would you please tell us what was said?

17 A Butchie told Patty that if I needed anything to
18 give it to me and don't worry about the money, that I would
19 pay as I sold, on consignment.

20 Q What else happened?

21 A At that time, nothing else.

22 Q Were any subsequent meetings arranged?

23 A Yes. Well, Patty gave me his number and I gave
24 him my number.

25 Q You are talking about telephone numbers?

hp4

Barnaba-direct

1 hp4 Barnaba-direct
2 A Yes. And we left off that if I needed anything
3 I was to call him.

4 Q Was there any discussion of price at this
5 meeting?

6 A Yes, I think there was.

7 Q What is your recollection as to the discussion?

8 A That I was to pay 25,000 for a kilo of heroin.

9 Q Did there come a time after this meeting at
10 Izzie's that you heard from Hank?

11 A Yes, I did.

12 Q About how long after the meeting at Izzie's
13 did this happen?

14 A A few nights later.

15 MR. SIEGEL: Your Honor, can we fix a month?

16 Are we still in August of 1971, Mr. Curran?

17 THE COURT: I believe it is.

18 THE WITNESS: We are in August, yes.

19 Q Is this in about the month of August, 1971?

20 A Yes.

21 Q Could it have been September, 1971?

22 A Possibly.

23 Q Is it in that period?

24 A Yes.

25 Q I think you testified you received a telephone

1 hp5 Barnaba-direct

2 call from Hank.

3 A Yes, I did.

4 Q What was said?

5 A He said he had to see me.

6 I said, "Okay, I'll be out to the house."

7 I got in my car and went out to the house.

8 He said he needed an ace.

9 Q This is the house that is where, Mr. Barnaba?

10 A On the service road of the New England Thruway.
11 I don't know the address. Right near the 233rd Street exit.

12 Q What happened when you got to the house?

13 A He said to me he needed an ace and how much is
14 it going to cost.

15 I told him 3500.

16 He said, "All right. Get it as soon as you can
17 and bring it."

18 Q What did you do then?

19 A I left to call Patty and told him to meet me at
20 Izzie's, which he did, and when I got there I told him I
21 needed an ace and I had to have it right away.

22 He says, "All right, I'll meet you in an hour
23 on the Hutchison River Parkway, the service road by the
24 Hutchison River Apartments." He said, "Just park and wait
25 for me." He fixed the time at 9 o'clock.

1 hp6 Barnaba-direct

2 Q Did you go there?

3 A I did.

4 Q And what happened?

5 A Patty came. He pulled up alongside of me,
6 rolled his window down, and my window was down, handed
7 me a package and left.

8 Q What did you do?

9 A I took the package and brought it to Hank at
10 Hank's house.

11 Q Is that the same house that you previously
12 described?

13 A Yes, sir.

14 Q Is there anything distinctive that you recall
15 about that house, since you don't remember the address?

16 A Well, he had two lions in the front of it,
17 stone lions, you know, on two poles, and he had a Great
18 Dane up the house.

19 THE COURT: Mr. Reporter, would you repeat the
20 last part of that.

21 (Answer read.)

22 Q After you got to the residence, Mr. Barnaba,
23 what did you do?

24 A I went upstairs and gave the ace to Hank.
25 He paid me and I left.

1 hp7 Barnaba-direct

2 Q How much did he pay you?

3 A 3500.

4 Q Did there come a time after that when you met
5 Patty?

6 A Yes, I did.

7 Q When was that?

8 A It was the following night.

9 Q Where did you meet him?

10 A At Izzie's.

11 Q What if anything happened?

12 A I gave him 3000 and I held 500.

13 Q \$500 was your commission?

14 A Yes.

15 Q Directing your attention, Mr. Barnaba, to a
16 short time after this, in about the month of August or
17 September of 1971 --

18 A Yes, sir.

19 Q -- did you see Butch Pugliese again?

20 A I did, at Izzie's.

21 Q Did you go any place with him?

22 A Yes, I did.

23 Q Where did you go on this occasion?

24 A We went to a delicatessen on Lydig Avenue off
25 of White Plains Avenue.

1 hp3

Barnaba-direct

2 Q In the Bronx?

3 A Yes.

4 Q You and he went there?

5 A Yes.

6 Q What happened at the delicatessen?

7 A He introduced me to a fellow named Anthony
8 Pagano and told him that if he ever needed anything to get
9 it from me.

10 Q Who told whom that?

11 A Butchie told him.

12 Q Butchie told Anthony Pagano?

13 A Pagano, that from now on if he needed anything
14 to get it from me.

15 I gave Anthony my number, he gave me his.
16 We hung around a while and we left.

2 17 Q Did Butch Pugliese on this occasion give Anthony
18 Pagano any reason as to why he should purchase from you?

19 A Well, he said he was going away.

20 Q After you left the delicatessen did you have any
21 further conversation with Butch Pugliese?

22 A Yes, on the way back. He says that Anthony
23 owed him \$3000.

24 Q Anthony Pagano?

25 A Yes.

1 hp9 Barnaba-direct

2 Q Mr. Barnaba, directing your attention to a few
3 nights later in about the month of September, 1971, did
4 you again see Butch Pugliese?

5 A Yes, at Izzie's Luncheonette on Brewer Avenue.

6 Q At the same luncheonette that you have men-
7 tioned previously?

8 A Yes.

9 Q That is at Westchester and Brewer Avenue?

10 A Brewer Avenue in the Bronx.

11 Q Was anybody else with him on this occasion?

12 A There was a fellow named Joe Sharp.

13 Q Joe Sharp?

14 A Sharp.

15 Q Were you introduced to Joe Sharp?

16 A Yes, I was.

17 Q Had you ever seen Joe Sharp before that?

18 A No.

19 Q Was there a conversation at this meeting with
20 you and Butchie Pugliese and Joe Sharp?

21 A Yes, there was.

22 Q Please tell us what was said.

23 A He said that I could put goods in Joe Sharp's
24 house, Joe Sharp was to hold it for me, and that I would
25 give him a hundred dollars every ace that I sold.

1 hp10

Barnaba-direct

2 Q Give who a hundred dollars?

3 A Joe Sharp.

4 Q Were you told at that time where Joe Sharp
5 lived or how to get in touch with him?

6 A I got his phone number, Joe gave me his phone
7 number, but I didn't know where he lived.

8 Q Directing your attention to a short time after
9 that, a day or a few days after this meeting, did you see
10 Butch Pugliese again?

11 A I did, in the afternoon, at Izzie's Luncheonette
12 again, and at that time he says, "Somebody is going to come
13 here, I want you to meet him."

14 A few minutes later a fellow did come. It
15 was a fellow named Frank Russo.

16 Q Were you introduced to Frank Russo?

17 A Yes. Well, I knew him. I had known him from
18 before.

19 Q Was there a conversation then?

20 A Yes. He told Russo -- he said he needed an
21 eighth and Butchie says he would give it to him that night
22 and we made arrangements that I was to meet him, Russo,
23 by Tardi's up in the Bronx on Randall Avenue that night
24 at 9 o'clock.

25 Q What is Tardi's, Mr. Barnaba?

1 hpl' Barnaba-direct

2 A It's a catering place.

3 Q Did you meet later that evening?

4 A I met with Butchie at Izzie's again about eight
5 o'clock.

6 Q This is just with Butch Pugliese now?

7 A Yes.

8 Q What happened?

9 A We hung around a while and about a quarter to nine
10 he said, "Meet me down by the service road on Bruckner
11 Boulevard, there is a building there they call Bruckner
12 Apartments," he said, "in about five minutes."

13 So he left with his car and I met him there.

14 Q Excuse me, Mr. Barnaba. What kind of car
15 was Butch Pugliese driving?

16 A '69 Eldorado Cadillac.

17 Q You met him near the Bruckner Apartments?

18 A Yes.

19 Q What happened when you met him there?

20 A Well, he handed me a package and I put it in
21 my car and I left to meet Russo.

22 Q What did this package consist of, what was it?

23 A It was an eighth of heroin.

24 Q Was it in a brown bag?

25 A Yes.

1 hpl2 Barnaba-direct

2 Q Then you went to Tardi's?

3 A Yes, I did.

4 Q Did you meet Frank Russo?

5 A Yes, I did. He was parked there waiting for
6 me.

7 Q What happened when you met him?

8 A I pulled up alongside of him. I told him roll
9 his window down. He rolled it down. I gave him the
10 package and he left.

11 I went back to Izzie's and met Butchie there
12 again and hung around till about 10 to 10.

13 Q At Izzie's?

14 A Yes.

15 Q Just you and Butch Pugliese?

16 A Yes.

17 Q Then what happened?

18 A We got in his car and went to Tremont Diner
19 on Tremont Avenue and Bruckner Boulevard. We got there
20 about 10 and we met Russo.

21 Q Is this the same Frank Russo you met earlier
22 that night?

23 A Yes.

24 Q What happened when you met him?

25 A He paid Butchie money. He had it in his sock.

1 hp13

Barnaba-direct

2 Q Pardon me?

3 A He gave Butchie money.

4 Q Where did he get the money from?

5 A He had it in his sock. He reached down there
6 and pulled it out of his sock there.7 Q Do you know how much money he handed to Butch
8 Pugliese?

9 A 3000.

10 Q What happened next?

11 A Well, we had coffee and then we left. When we
12 were in Butchie's car going back Butchie gave me \$200.

1 hppl Barnaba-direct

3a

2 Q Now, Mr. Barnaba, do you see Frank Russo, the
3 Frank Russo about whom you have testified in the court-
4 room?

5 A Yes, I do.

6 Q Will you please identify him by pointing to
7 him?

8 A He is over here, behind Mr. Dowd.

9 MR. DOWD: Behind who?

10 THE WITNESS: Behind you, the lawyer.

11 MR. CURRAN: Your Honor, may the record show
12 the witness has identified the defendant Russo.

13 MR. DOWD: It is stipulated he is correctly
14 identified.

15 MR. CURRAN: Thank you.

16 Q Mr. Barnaba, did there come a time in about the
17 month of September or October, 1971, when you worked at a
18 legitimate job with Dutch Pugliese?

19 A Yes, I did.

20 Q Did he work at it too?

21 A Yes, he was shop steward.

22 Q Where was that job?

23 A 47th Street and Fifth Avenue, New York City.

24 Q In Manhattan?

25 A Yes, sir.

1 hpp2

Barnaba-direct

2 Q What kind of work were you doing there? What
3 was your job?

4 A I was down as a laborer, just moving cement
5 blocks.

6 Q For about how long a period of time did you
7 and Butch Pugliese work together at that job?

8 A I put in about three weeks.

9 Q Now, Mr. Barnaba, directing your attention to
10 in about the month of September or October, 1971, did
11 there come a time when you met at Izzie's Luncheonette
12 with Patty and Harry?

13 A Yes.

14 Q Do you know Patty's last name?

15 A No.

16 Q Do you know Harry's last name?

17 A Well, I didn't know it at the time. I found
18 out later.

19 Q And what did you find out the last name to be?

20 A Patty?

21 Q Patty or Harry.

22 A Patty was Dilacio.

23 Q Did you find out Harry's?

24 A Harry was Pannirello.

25 MR. KING: I'm sorry, I didn't hear the last

1 hpp3

Barnaba-direct

2 name.

3 THE WITNESS: Pannirello.

4 Q Was the defendant Pugliese also present at
5 this meeting?

6 A Yes, he was.

7 Q Was there a conversation?

8 A Yes.

9 Q Will you please tell us what was said this time?

10 A He told Patty to give me a half in eighths.

11 Q Excuse me, "he" is who?

12 A Butchie told Patty to give me a half in eighths.

13 Q A half in eighths?

14 A Half a kilo in eighths.

15 Q What did that mean to you?

16 A A half-kilo broke down in packages of eighths.

17 Q One-eighth kilogram packages?

18 A Right.

19 Q Four one-eighth packages?

20 A Yes, and that I would pay for it as I sold.

21 It was on consignment. And, Patty said all right, and
22 he made an arrangement with me to meet him, it was the
23 following night.

24 Q Who made the arrangement to meet the following
25 night?

hpb4

Barnaba-direct

1
2 A Patty, on the service road of Pelham Parkway,
3 near Eastchester Road, at 9 o'clock. Before that, I made
4 arrangements with Joe Sharp to meet me at 9.30. I was
5 going to give him the package to hold.

6 Q The package you were to receive from Patty?

7 A From Patty. I went to meet Patty, I met him,
8 and about 9, a little after, he pulled up behind me in his
9 car, it was parked on the side. I got out of my car,
10 walked over and he handed me a package. I put it in my
11 car and I left with Joe Sharp.

12 Q The package was a package with --

13 A With four one-eighth kilograms of heroin.

14 Q Did you then meet Joe Sharp?

15 A Yes, I did.

16 Q Where did you meet him?

17 A On Mary Avenue, off of Crosby Avenue, in the
18 Bronx.

19 Q Was anyone with him?

20 A He was alone. He had little dog.

21 Q What happened when you met him?

22 A I met him and I gave him the package.

23 Q The package you had just received from Patty?

24 A Yes, and a satchel that Butch gave me to gie
25 him.

1 Q A satchel?

2 A One of them overnight bags.

3 Q That Butch Pugliese had given you to give Joy
4 Sharp?

5 A He said, "When you meet Joe Sharp, give him
6 this bag, too."

7 Q What was in the bag, if you know?

8 A A scale and a thermometer.

9 Q And after you gave these items that you mentioned
10 to Joe Sharp, was anything else said?

11 A I told him if I needed anything, I will call him.
12 He said, "When you call me, just give me the time and I'll
13 meet you on this block." He said, "You meet me here, I
14 don't want you to come by my house." That's the arrangement
15 that we had.

16 Q Directing your attention, Mr. Barnaba, to the
17 latter part of October or into the month of November,
18 1971, did you hear from Hank?

19 A Yes, I did, on three different occasions in
20 that period. I don't know the dates. But, it was in that
21 span of November.

22 Q Tell us what happened when you heard from him
23 on each of these occasions.

24 A On each occasion he bought an eighth from me
25

1 hpp6 Barnaba-direct

2 for 3500 an eighth.

3 Q Tell us how the sales took place, if you will.

4 A He would call me.

5 Q At your home?

6 A Yes.

7 Q And then what happened?

8 A I would go there.

9 Q Go where?

10 A To his house, and he would tell me what he wanted
11 and I would set a time later on, and I would call Joe Sharp
12 and meet him, and he would give me the eighth and bring it
13 to Hank's house and collect the money.

14 Q Joe Sharp would give you the eighth on each
15 occasion?

16 A Yes, and on each occasion I gave him a hundred.

17 Q On each occasion did you deliver to Hank?

18 A Yes.

19 Q Where?

20 A At his house on every occasion.

21 Q Did he pay you separately each time?

22 A Yes.

23 Q How much did he pay you each time?

24 A 3500 each time.

25 Q Mr. Barnaba, directing your attention to in

1 hpp7

Barnaba-direct

2 about the last part of the month of November, 1971, after
3 these three transactions with Hank, did you hear from a man
4 named Frank Monaco?

5 A Yes, I did.

6 Q About how long had you known Frank Monaco?

7 A Seven, eight years, ten years.

8 Q Did you hear from him in person or by telephone?

9 A No, he came to my house.

10 Q Did you have a conversation with him?

11 A Yes.

12 Q Please tell us what was said.

13 A He had somebody that wanted an eighth by the
14 name of Dingle and he was to meet him at Korvette's parking
15 lot if I had it. I said I did. I had met Dingle before
16 this, a little before. I told him to wait here, that I
17 would go get it and give it to him. I called Joe Sharp,
18 I met him.

19 Q Met who?

20 A Joe Sharp.

21 Q Where did you meet Joe Sharp?

22 A Off Crosby. I used to meet him in the same
23 spot. I brought the eighth back and gave it to Monaco.

24 Q Did Joe Sharp give you the eighth?

25 A Yes.

1 hpp8.

Barnaba-direct

2 Q Where did you go back to meet Monaco?

3 A By my house. He was waiting for me down-
4 stairs.

5 Q Did he pay you?

6 A Monaco?

7 Q Yes.

8 A No. I gave him the eighth. He had fellows
9 waiting down by Korvette's parking lot. He left and he
10 was about 20 minutes, a half-hour, with the money. He
11 got 3500 for it. I took 3000 and I gave him 250 and I
12 took 250.

13 Q Did you pay Joe Sharp \$100 on this occasion?

14 A Yes, I did.

2 15 Q Now, in the month of November, 1971, did you
16 pay Patty or Harry for the half which you had received from
17 Patty?18 A Yes, I did. I paid him on two different oc-
19 casions but I didn't pay him all the money I owed him.
20 I held back 1700.

21 Q How much did you owe him for the four eighths?

22 A It was 25,000 for a package, so half would be
23 twelve five.

24 Q And the first time you paid, who did you pay?

25 A Patty.

1

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Q How much did you pay him?

3

A Are we going back now to the first eighth?

4

Are you talking about the --

5

Q I am talking about the four eighths.

6

A The first time I paid Patty and Harry together.

7

Q How much did you pay?

8

A I gave him 6000.

9

Q I think you testified there was a second payment for the four eighths.

11

A Yes.

12

Q How much did you pay on that occasion, if you recall?

13

14

A Everything but the 1700.

15

Q The balance you never paid?

16

A No.

17

Q Was there a time, Mr. Barnaba, in about the month of November, 1971, when you met Patty at his apartment?

19

20

A Yes.

21

Q Was Harry also there?

22

A Yes.

23

Q And what happened on this occasion?

24

A We talked a while and then Harry asked me to take a ride with him. We left --

25

hpy10

Barnaba-direct

Q "We" being you and Harry?

A Me and Harry. We got in his car, and drove around a while.

Q What kind of car was he driving?

A '65 or '66 Mustang, green, with a black vinyl top, Jersey plates. He went up Tremont Avenue and turned up a block and parked and he said, "I'll be back," and he stopped the car. When he was gone, I seen Patty and another guy, Frank Sinatra, talk on the sidewalk.

Q That is the same Patty who left before?

A Yes.

Q Where did Harry go?

A He went over there, and they were in a huddle, and then he came back to the car and we went over the George Washington Bridge to Jersey.

Q You did not hear this conversation, did you?

A No.

Q I think you testified that Harry joined Patty and a man whom you called Frank Sinatra.

A Yes, sir. Not the singer.

Q Do you see that man whom you referred to as Frank Sinatra in the courtroom?

A Yes, sir.

Q Would you please identify him by pointing to

1 hpp11 Barnaba-direct

2 him?

3 A He stood up.

4 MR. CURRAN: May the record show the witness
5 has identified the defendant Gamba.

6 Q I think before I interrupted you, you said Harry
7 came back to the car with you, to his car.

8 A Right.

9 Q Where did you go then?

10 A To Jersey over the George Washington Bridge.

11 When we got over the bridge, about ten or fifteen minutes,
12 maybe a little more, he pulled in behind a Howard Johnson
13 Motel, and parked and he got out of the car and walked over
14 to a car where there was two colored fellows over there, and
15 I saw him hand them a package. The car had Washington
16 plates on.

17 Q You saw who hand whom a package?

18 A Harry handed one of the colored fellows a package
19 They talked a while and he come back to the car.

20 Q You were at the car?

21 A I was sitting in his car. I said, "What did you
22 do, you made a deal." I said, "You gave this guy goods."
23 He said yes. I said, "Why didn't you tell me that you
24 got the goods, don't let me ride in a car and you got
25 something and I don't even know about it." I got a little

1 hpp12 Barnaba-direct

2 mad.

3 He said, "It don't mean nothing." I said,
4 "It means something, I can get pinched and I don't know
5 what's about all about."

6 And I didn't see him any more after that.

7 Q Could you describe the car of the other men?

8 A Gold car, I think it was a Buick, or an
9 Oldsmobile, one of the two, with Washington plates on it.

10 Q Washington, D.C. plates?

11 A Yes.

12 Q I brought your attention back, Mr. Barnaba, to
13 some time in the middle or latter part of the month of
14 September, 1971, about a month before Butch Pugliese went
15 away. Did you have a conversation with him at Izzie's?

16 A Yes.

17 Q Was there any conversation at this meeting
18 about the defendant Inglese?

19 A Yes. He had said that -- Gigi had asked him
20 to go to Vinnie Papa and get him a package on consignment
21 and Butchie refused.

22 Q He told you that he refused?

23 A Yes. He said Gigi was drowning, and "He wants
24 me to drown with him." So, I said, "How would Vinnie give
25 you a package on consignment?"

1 hpp13 Barnaba-direct

2 He said, "We're tight, I call him Uncle."

3 He said, "I jacked a car off a ship one time for him with
4 ten packages in it."

5 Q He said this about Vinnie Papa?

6 A Yes.

7 Q Mr. Barnaba, directing your attention to a point
8 around the beginning of October, 1971, did there come a
9 time when you were at a place called the Cottage Inn?

10 A I was there on a few occasions.

11 Q Specifically, was there a time when you were
12 there with Butch Pugliese, around the beginning of
13 October, 1971?

14 A Yes.

15 Q Had you been there before?

16 A I was there on two or three different occasions,
17 yes, with Butchie.

18 Q Did you have a conversation with Butchie on
19 this occasion?

20 A Yes. Joe Sharp was with us that night and
21 when we walked in, Butchie said that Joe Di Napoli owned
22 the joint and he was partners with him.

23 Q He was partners with Joe Di Napoli?

24 A Yes.

25 I said, "You're partners in the joint too?"

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Barnaba-direct

He said, "No, everything but the joint."

Q Was Joe Sharp present during this conversation?

A No.

Q Now, Mr. Barnaba, I am going to refer back to some testimony which you gave this morning. You testified about in the month of December, 1970, there was a ten-day, two-week approximately period when you kept returning to the Winkinson Avenue Club and saw the defendant Inglese each time?

A Yes.

Q You testified that you saw an individual who was tall and thin come in with what appeared to be shirt boxes. Do you recall that?

A Yes.

Q Do you recall that testimony?

A Yes.

Q I believe I asked you if you have ever seen that man before and you said you had not. Do you recall that?

A Yes.

Q Directing your attention, Mr. Barnaba, to the month of October, 1971, did you have occasion again to see that individual?

A Yes.

Q Where did you see him?

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Barnaba-direct

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A On First Avenue, 119th Street, coming --

Q In Manhattan?

A Yes, coming out of a grocery store.

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Q Was anyone with you when you saw this man this time?

A Butchie was with me.

Q Butchie?

A Pugliese. We were coming from the union hall, 110th Street. And --

Q What time of day was this, approximately?

A Afternoon. We were passing the place and Butchie said one of Gigi's customers owned it and he pointed to the place. As I looked I saw this guy coming outside and stand there and I recognized him as the one that had been in the Beach Rose Club that night. Butchie said it was one of Gigi's customers. I told Butchie, I says, "I saw him in the club, he come in with two boxes" --

MRS. ROSNER: Objection, your Honor, narrative hearsay.

THE COURT: I will permit it.

A I told Butchie I had seen him in Gigi's club coming with two boxes. Butchie says, "Them boxes were full of money."

Q What had you and Butch Pugliese been doing in the union office that afternoon?

A I went to join the union.

Q Mr. Barnaba, directing your attention to the night before Butch Pugliese went away, were you at his house?

A Yes.

Q Where is his house?

A Mulford Avenue, off Westchester Avenue, in the Bronx.

Q M-u-l-f-o-r-d?

A Right.

Q About what time did you get to his house that night?

A About 10 o'clock. He had a little get-together.

Q Who was present?

A There was myself, Joe Sharp, Frank Sinatra, Harry, Patty was there. That's about it.

Q Butch Pugliese was there?

A Yes.

Q During that get together, did you have a conversation with Butch Pugliese?

A Yes. He asked me what I thought of Frank Sinatra as a stash.

Q As a stash?

A Yes.

Q What did that mean to you?

A Somebody to hold goods for.

Q What did you say to that question?

A I says I didn't knos Sinatra that well, "You probably know him better than me. There is nothing I can tell you about him."

Q Was anyone else present during this conversation?

A No.

Q Now, directing your attention to towards the end of December, 1971 or beginning of December, 1971, were you again in Patty's apartment on Pelham Parkway on a Saturday?

A Yes. I had gone there to see if -- I was out, I had no more goods -- to see if he got anything, and he says no, he didn't.

Q Will you take your hand down so I can hear you a little better?

A He said, no, he didn't; he had seen Joe DiNapoli and he told him no, no way, and that he was trying to see his partner, Butchie.

I said, "Butchie," I says, "Butchie is away."

He said, "No, not that Butchie, Butchie Mamone."

I said, "That's his partner."

He said, "Yes."

I said, "How many partners does he have?"

Q How many partners does who have? Who were you referring to?

A To Joe DiNapoli.

Q What did Patty say, if anything?

A Patty didn't say anything. He kept quiet and nothing else was said about it.

Q Mr. Barnaba, do you know the defendant Carmine Tramunti?

A Yes, I do, by sight.

Q If he is in the courtroom will you please identify him by pointing to him?

A Next to Mr. Siegal.

MR. CURRAN: Your Honor, may the record show the witness has identified the defendant Tramunti.

THE COURT: Yes.

Q Directing your attention, Mr. Barnaba, to the middle period of 1973, and specifically to the Lo Piccolo Espresso House Shop, that's located where?

A Between -- it's on Westchester Avenue, across the street from Izzy's.

Q Did you see the defendant Tramunti there during this period?

1
2 A Yes, I did.

3 Q Did you see him with anyone?

4 A One time I went there I saw him -- Finnegan
5 was in there.

6 Q With him?

7 A Sitting at the table.

8 Q The same table?

9 A No.

10 MR. FISHER: Your Honor, I thought the wit-
11 ness said playing cards. I think the record should show
12 that.

13 THE COURT: I heard "sitting at a table,"
14 and then was he with him and the answer is "No."

15 MR. FISHER: Could the witness be asked if
16 he said playing cards?

17 THE COURT: Sure. What did you say?

18 Q Did you say Finnegan was playing cards?

19 A I said he was sitting at a table.

20 Q Directing your attention to the middle part
21 of '73, Saturday, was there another time that you went
22 to the Lo Piccolo?

23 A Yes, there was.

24 MRS. ROSNER: May we have the month, your
25 Honor?

1 hpa
2 Q Do you know the month?

3 A Either August or September, I believe.

4 MR. ELLIS: What was that answer?

5 MR. CURRAN: "Either August or September, I
6 believe."

7 Q Did you go into Lo Piccolo on this occasion?

8 A Yes.

9 Q Did you see the defendant Tramunti there?

10 A Yes, he was standing up. I was looking for --

11 MRS. ROSNER: Objection who he was looking
12 for.

13 THE COURT: He didn't tell us who he was
14 looking for. All right, he saw Tramunti.

15 Q Was he with you looking for a particular indi-
16 vidual?

17 A Yes, a fellow by the name of Joe Flat.

18 Q Is Joe Flat a nickname?

19 A Yes? His name is Frank Lalli.

20 Q Was Joe Flat there?

21 A No.

22 Q Was Finnegan there?

23 A Yes, Finnegan was there.

24 Q What did you do when you went into the
25 Lo Piccolo?

A I asked if Joe Flat was in there.

Q Who did you ask?

A I just asked -- nobody in particular, but --

Q Did you ask out loud?

A Yes, and Mr. Tramunti answered that he wasn't here.

I said, "I see his car parked outside, he must be somewhere."

He said, "Look across the street in the pizza place or pet shop."

I went to the pizza place and he wasn't there. I went to the pet shop, he wasn't there. I went back to Lo Piccolo and I walked in and said, "He's not there."

Mr. Tramunti says, "He's not here. What do you want from me? What do you want me to do? He must have went somewhere."

He seemed annoyed.

Q What did you do?

A I turned around to walk out, and I saw Finnegan sitting there and I called Finnegan to talk. Finnegan said, "I can't, I'm cutting a game." He was by the table with cards.

So I walked out and I left.

Q What was Finnegan's expression, if he had any

1 hpa

Barnaba-direct

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2 on his face, when he said he couldn't that he had to stay
3 at the game?

4 MR. FISHER: Objection, if your Honor
5 please.

6 Q How did he appear?

7 A He seemed annoyed.

8 MR. FISHER: Objection as to how he appeared.

9 MR. RICHMAN: May I ask the relevance of all
10 this, your Honor?

11 THE COURT: Not now.

12 MR. CURRAN: Your Honor, might this be an
13 appropriate time to take a break?

14 THE COURT: Yes. All right. Will the
15 marshal escort the jury out. Everyone else remain seated
16 please.

17 (The jury left the courtroom.)

18 THE COURT: I was trying a case one time and
19 one of the attorneys got up as the jury was leaving the
20 room and stepped squarely on the forelady's foot. I'm
21 not going to say they lost it for that reason but it surely
22 didn't help.

23 MR. SIEGAL: May we have an instruction
24 that nobody talk to this witness during the recess?

25 MR. CURRAN: No objection, your Honor.

1 hpa

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2 THE COURT: All right. We will take 10.

3 (Recess.)

4 (Jury present.)

5 BY MR. CURRAN:

6 Q Mr. Barnaba, I show you what is Government's
7 Exhibit 21 in evidence and I ask you if you recognize the
8 man in the left-hand side of that photograph, your left.

9 A Yes.

10 Q Who is he?

11 A Swifty.

12 Q What is Swifty's last name?

13 A Pellegrino.

14 Q Mr. Barnaba, directing your attention to
15 some time in around the middle or toward the end of the
16 month of October of 1971, did there come a time when
17 you were at a courthouse in the Bronx?

18 A Yes.

19 Q Did you see Butch Pugliese at that courthouse?

20 A Yes, I did.

21 Q Did you see anyone else there?

22 A Yes.

23 Q Who else did you see there?

24 A His lawyer, his brother and later on a colored
25 fellow came.

1 hpa

Barnaba-direct

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2 Q Were you introduced to the colored fellow?

3 A Yes, I was.

4 Q How was he introduced to you?

5 A As Basin.

6 MR. CURRAN: May this photograph be marked
7 Government's Exhibit 62 for identification, your Honor.

8 (Government's Exhibit 62 was marked for iden-
9 tification.)

10 Q Mr. Barnaba, I show you a photograph marked
11 Government's Exhibit 62 for identification and ask you
12 if you recognize the individual in that photograph.

13 A Yes.

14 Q Who is he?

15 A That's Basin.

16 Q Is that the man you met at the court that
17 day?

18 A Yes.

19 Q He was introduced to you by Butch Pugliese?

20 A Yes.

21 MR. CURRAN: I offer it in evidence, your
22 Honor.

23 MR. FISHER: Objection, if your Honor please,
24 on the ground of relevance.

25 THE COURT: I assume all counsel will raise

1 hpa

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2 the same objection. I will accept it.

3 (Government's Exhibit 62 was received in
4 evidence.)

xx 5 Q Mr. Barnaba, do you recall testifying shortly
6 before the recess, the recess that was just taken, that
7 in 1972, on two occasions you saw the defendant Tramunti
8 at Lo Piccolo? Do you remember that testimony?

9 A Yes.

10 Q Directing your attention, Mr. Barnaba, speci-
11 fically to the second occasion, do you recall your testi-
12 mony?

13 A Yes.

14 Q Will you please tell us in about what month,
15 if you know, you place that seeing of the defendant Tramunti?

16 MR. SIEGAL: Objection to it. That ques-
17 tion has already been answered.

18 THE COURT: I assume it is introductory to
19 another line of questioning. Go ahead.

20 MR. CURRAN: May we approach the bench, your
21 Honor?

22 (At the side bar.)

23 MR. CURRAN: I don't want to mislead your
24 Honor. It is not introductory to a new line of
25 questioning. The witness answering as he did before,

1	hpa	Barnaba-direct	1470
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2 August or September, 1973, that answer took me by surprise
3 because in my office a couple of weeks ago, in Mr.
4 Phillips' presence, he put his best recollection in May
5 of '73 or perhaps June, and I wanted to ask him what his
6 best recollection was and, depending on the answer, I
7 was going to ask permission to claim surprise and
8 examine him.

9 MR. SIEGAL: Talking about surprise, let
10 me have the 3500 on these conversations. I have no
11 3500 on these two conversations that you are talking
12 about. There must be some notes about it.

13 MR. CURRAN: No notes.

14 MR. SIEGAL: There must have been a conversa-
15 tion, notes.

16 MR. CURRAH: I talked with him.

17 MR. SIEGAL: I don't think you have a right
18 to attempt to impeach him. If you want to take the
19 stand and tell us he gave you some other information,
20 that's different. I think that question was answered.

21 MR. CURPAN: It was.

22 THE COURT: I will permit it.

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Barnaba-direct.

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2 (In open court.)

3 MR. CURRAN: Your Honor, might the reporter
4 read back the last question?

5 (Question read.)

6 Q You may answer.

7 A I place it as August or September.

8 Q 1973.

9 A Yes, sir.

10 Q Could it have been in May --

11 MR. SIEGAL: I object to it, if your Honor
12 please. This is direct examination.

13 MR. CURRAN: Your Honor, I thought we discussed
14 that at the side bar.

15 THE COURT: The objection is overruled.

16 Q Could it have been in May or June of 1973?

17 A Could have been, yes.

18 Q Mr. Barnaba, did you discuss the facts to
19 which you have testified in this case with me in this
20 building?

21 A Discuss the facts?

22 Q The facts that you have testified about here,
23 have you talked with me about them?

24 A Yes.

25 MR. FISHER: Objection to the word "facts,"

1 if your Honor please. It assumes a fact not in evi-
2 dence.
3

4 MR. CURRAN: How about the matters, your Honor.

5 THE COURT: No, no. This is semantics.

6 Did you discuss the testimony which you gave
7 today with Mr. Curran in this building before you came
8 to court, not today, at any time before you came to court?

9 THE WITNESS: Yes, your Honor.

10 Q Over approximately what period of time have
11 you talked with me?

12 A Two or three weeks.

13 Q Had you also talked before that for any
14 length of time with Mr. Phillips?

15 A Yes, I did.

16 Q That was before that?

17 A Yes.

18 Q Directing your attention now back, if you will,
19 to the meeting at the court that you just testified
20 about a couple of minutes ago --

21 A Yes.

22 Q -- was Harry Pannirello there also?

23 A Yes, he was.

24 MR. CURRAN: Would your Honor bear with me
25 one moment, please.

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Barnaba-direct

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2 THE COURT: Yes.

3 (Pause.)

4 MR. CURRAN: Your Honor, I have no further
5 questions of this witness at this time.

6 THE COURT: All right.

7 MR. SIEGAL: May I have a second, Judge?

8 THE COURT: Sure.

9 MR. LOPEZ: Your Honor, in the interim
10 may I make an application at the side bar?

11 THE COURT: Sure.

12 (At the side bar.)

13 MR. LOPEZ: Judge Duffy, most respectfully,
14 it is a few minutes after 4. In view of the fact that
15 the Barnaba testimony touches upon so many defendants,
16 many of the attorneys have as yet not been able to see
17 the transcript that we prepared on the Barnaba tape, as
18 a matter of fact, the government hasn't had even a
19 chance to see it yet either, and this would be some
20 basis for cross examination -- I want to turn over a copy
21 to them now -- our application in behalf of all de-
22 fense counsel is if we can resume 10 o'clock on Monday
23 for cross examination of Barnaba.

24 I know that the jury has been subjected to quite
25 an amount of facts given by this witness, quite an amount

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of testimony, and I am hopeful that your Honor will indulg
us and grant that application. We are talking about
a half hour here.

MR. CURRAN: Your Honor --

THE COURT: No. . . Let's go ahead.

(In open court.)

CROSS EXAMINATION

BY MR. ROSENBERG:

Q Mr. Barnaba, my name is Theodore Rosenberg.
I represent the defendant Pugliese. .

I believe that you told us that you were
first convicted of the sale of narcotics way back in 1952,
is that correct?

A Yes, sir.

Q On that conviction, was that the first sale
you ever made or were you selling narcotics prior to the
time you were convicted?

MR. CURRAN: Objection, your Honor.

MR. ROSENBERG: If your Honor please, I
respectfully submit this goes to the credibility of the
witness. If he in fact made an isolated sale I think
that perhaps the jury can view it one time. If in
fact he was deeply involved --

THE COURT: All right, Mr. Rosenberg. No

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Barnaba-cross

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summation now. The objection is sustained.

MR. ROSENBERG: Exception, your Honor.

Q After your conviction in 1952 you came out and you got yourself involved again in narcotics, is that correct?

A Yes, sir.

Q And you got convicted when after that?

A '57.

Q Were you arrested in '53 for the sale of narcotics?

MR. CURRAN: Objection, your Honor.

THE COURT: Sustained.

Q From 1952 to 1957 were you dealing in narcotics?

MR. CURRAN: Objection, your Honor.

THE COURT: Sustained.

Q When did you come out of jail on your '52 conviction?

A '54.

Q Did you go to work in 1954?

A I believe I did, yes.

Q What kind of work were you doing?

A Construction.

Q Who did you work for?

MRS. ROSNER: Your Honor, I am having a lot

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Barnaba-cross

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of trouble hearing the witness.

THE WITNESS: I am sorry.

THE COURT: He worked in construction.

Q Who did you work for?

A I don't remember the name of the outfit.

Q How long did you work there?

A Seven eight months.

Q How about in 1955; were you working?

A No, I don't think so.

Q How about 1956; were you working?

A No, sir.

Q In 1957 you got convicted again of the sale of narcotics, is that correct?

A Yes, sir.

Q So in '55 and '56, sir, how did you support yourself?

A Well, I got arrested in '56 for narcotics.

Q In other words, you are telling us that in 1955 and 1956 you were selling narcotics, is this what you are telling us?

MR. CURPAN: Objection.

THE COURT: Sustained.

Q How did you support yourself in '55 and 1956?

A I don't recall.

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Barnaba-cross

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2 Q You don't recall?

3 A No.

4 Q You told this jury about dates in November of
5 '71 on a Saturday at 8 o'clock and you don't recall what
6 you did for a whole year, is this what you are telling
7 us now?

8 MR. CURRAN: Your Honor, I object. That's
9 highly improper. He is talking about 20 years ago
10 almost now, your Honor.

11 MR. ROSENBERG: Let's find out how good his
12 recollection --

13 MR. CURRAN: I object.

14 THE COURT: Wait a second. You will both
15 have a chance to sum up. That is what closing arguments
16 are for. It is not during the taking of evidence.

17 Q You don't recall how you supported yourself
18 in 1955, is that right?

19 MR. CURRAN: Objection, your Honor. It
20 has been asked and answered.

21 Q How about 1956; can you recall how you supported
22 yourself, sir?

23 A I got arrested in 1956.

24 Q I asked you if you recall how you supported
25 yourself.

1 jha
2 MR. CURRAN: Objection, if your Honor
3 please.

4 MR. ROSENBERG: It is not responsive, your
5 Honor.

6 THE COURT: I will permit it.

7 Q How did you support yourself in 1956?

8 A I answered, counselor. I don't recall.

9 Q Tell it to me again. How did you support you
10 self --

11 THE COURT: He said he didn't recall.

12 A I don't recall.

13 Q You don't recall in '55?

14 A No, sir.

15 Q And you don't recall in '56, is that what you
16 are telling us?

17 A Yes, sir.

18 MR. CURRAN: I think he has; your Honor,
19 three times now.

20 Q You say you got arrested in '56 and you went
21 to jail in 1957 for the sale of narcotics, is that cor-
22 rect?

23 A Yes, sir.

24 Q When did you get out of jail?

25 A '61.

Q Do you remember the month that you got out of jail?

A No, sir, I don't.

Q How long were you out in 1961?

A Well, I served four and a half years of a two-and-a-half-to-five sentence. I was paroled with six months left on the five years. I was sent back I believe three months later.

Q So that you were out --

A Three months.

MR. CURRAN: I think the witness is still answering the question, your Honor.

THE COURT: He ended up by saying three months.

Q You were out for three months, is that right?

A Yes, sir.

Q Before you went back for violation of parole, is that correct?

A Yes, sir.

Q How did you support yourself during those three months?

A Well, I had a few dollars. I wasn't doing anything.

Q Where did you get these few dollars from?

Did you save them in jail?

A No.

Q When you came out where did you get these few dollars from?

Q I had a few dollars before I went away.

Q Where was it?

A Home.

Q You left it in the house?

A Yes.

Q How much did you have at that time?

A I don't recall the amount.

Q At any rate, for the three months that you were home you lived on what you say was in the house, is that correct?

A Yes, sir.

Q - And it was not from the sale of narcotics, was it?

A I don'r recall.

Q The three months that you were home before you went back for violation --

A - Yes.

Q -- you didn't support yourself by selling narcotics, it was from the few dollars that you had in the house, right?

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A Yes.

MR. CURRAN: Objection to that question.

THE COURT: He answered it already.

Q When did you come out of jail after that?

A I went back for violation, like I said, and
I served another 10 months.

Q When did you come home?

A In '62.

Q Incidentally, your first conviction was for
desertion?

A I already brought that up.

Q Just give me a yes or no.

MR. CURRAN: He asked the question.

MR. ROSENBERG: I asked if his first con-
viction --

THE COURT: Would you two cut it out?

Mr. Barnaba, was your first conviction for
desertion? Yes or no.

THE WITNESS: Yes, your Honor.

THE COURT: All right.

Q That was in 1952, is that correct?

A Yes.

Q Incidentally, were you convicted of anything else
other than desertion and selling narcotics?

2 A Convicted of anything else?

3 Q Yes.

4 A Not that I recall, no.

5 Q All right, Mr. Barnaba. When did you get
6 arrested with respect to the time you were brought into
7 Frank Rogers' office? Do you recall when that was?

8 A November of '73.

9 Q What was the charge then, in November of '73?

10 A Let me make sure it was '73.

11 No. '72. I am sorry, counselor.

12 Q November of '72?

13 A Yes.

14 Q You were arrested by Frank Rogers' office?

15 A Yes.

16 Q What was that for?

17 A Conspiracy.

18 Q Conspiracy to do what?

19 A To sell narcotics.

20 Q How much time were you facing on that con-
21 spiracy to sell narcotics, do you know?

22 -MR. CURRAN: Objection, your Honor.

23 THE COURT: I will sustain it.

24 Q Did you have a conversation with Frank Rogers
25 with respect to how much time you were facing on that

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2 case?

3 A At that time, no.

4 Q Did you ever have a conversation with Frank
5 Rogers with respect to how much time you were facing?

6 A He said it was an A felony when we were having
7 a conversation.

8 Q What did he tell you an A felony called for?

9 A He didn't say. I don't recall him saying
10 anything specifically.

11 Q Let me see if I can refresh your recollec-
12 tion.

13 THE COURT: Please don't.

14 MR. ROSENBERG: What is that, sir?

15 THE COURT: I said please don't. Are we
16 going to get into what you think Mr. Rogers might have
17 said?

18 MR. ROSENBERG: No, not what I think, your
19 Honor; what is in the tapes.

20 THE COURT: Go ahead.

21 Q Do you have a recollection of Mr. Rogers telling
22 you that you are facing 50 years to life? Do you recall
23 anything like that?

24 A No, I don't.

25 Q You don't?

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A He may have said it. I don't remember.

Q What is your understanding of what an A felony is, sir?

A I'm not a lawyer, counselor. I don't know.

Q But you have been dealing in narcotics since 1952, is that correct?

MR. CURRAN: Objection, your Honor.

THE COURT: That doesn't make him a lawyer.
Objection sustained.

MR. ROSENBERG: I will withdraw the question.

Q You are aware, sir, that the volume of narcotics goes to the degree of your exposure, is that correct?

MR. CURRAN: I object to that, your Honor.

THE COURT: Yes. Objection sustained.

MR. FISHER: If your Honor please, I respectfully submit that the witness' state of mind with regard to penal incarceration bears directly on his motive to testify and I cite United States vs. Blackwood, the footnote --

THE COURT: I am aware of the case.

MR. FISHER: -- in United States vs. Gonzalez, your Honor.

Q I show you, sir, a transcript of an interview

that you had with Mr. Rogers back in November of '72 and I ask you to look at the underlining and see if that refreshes your recollection, page 67. See if that refreshes your recollection with respect to the conversation you had with Mr. Rogers.

A I answered, counselor, before. I says he may have said it. I don't recollect.

Q Now, having read it, sir, does that refresh your recollection that Mr. Rogers told you on that day that you were facing 50 years to life? Does that refresh your recollection, having read this?

A If it is there he must have said it.

Q I didn't ask you whether or not he said it. I asked you whether or not this refreshes your recollection. Does it?

A I remember 50 years. I don't remember the life.

Q You have a recollection that you were facing 50 years, is that right?

Now, did you receive any consideration from Mr. Rogers or from the government with respect to your testimony?

A No, sir.

Q Sir, what were you indicted for with respect

2 to the charge where you were facing 50 to life? Were you
3 indicted for a class A felony or were you indicted for
4 a class E felony?

5 || A That I don't know, counselor.

6 Q You have no idea?

7 A No, sir.

8 Q When were you indicted? I don't even know.

9 I don't remember.

10 Q What year?

11 A With Mr. Rogers?

12	Q	Yes.
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13 Λ '73.

14 Q In '73, what month?

15 A I was picked up in November. I assume it
16 was November.

17 Q In November of '73 you were indicted, is
18 that correct?

19 A I was picked up in November.

20 Q And you went to Supreme Court and you pled not
21 guilty?

22 A I did.

23 Q At that time, is that right?

24 A Yes, sir.

25 Q How much bail were you held on?

1 A I believe it was a thousand dollars.

2 Q How much?

3 A \$1000.

4 Q \$1000?

5 A One or 5000, 1000 cash or \$5000 bond.

6 Q Considering that you say you were facing a
7 life sentence, don't you feel that the \$1000 bail was
8 consideration for your testimony?
9

10 MR. CURRAN: I object to that, your Honor.

11 THE COURT: Sustained.

12 MR. CURRAN: That is not the testimony.

13 A I hadn't given any testimony.

14 Q You hadn't given any testimony at that time?

15 A No, sir.

16 Q You gave him a story though?

17 A I did.

18 Q Is that right?

19 A Right.

20 Q Did you get any consideration for this
21 story is what I am asking you.

22 MR. CURRAN: Objection, your Honor.

23 THE COURT: I think it has been asked and
24 answered.

25 MR. ROSENBERG: He said he did not receive

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any consideration. I want to know if a thousand dollars bail is consideration, if your Honor please.

MR. CURRAN: Objection.

THE COURT: He can answer that.

Q Sir, do you consider the thousand dollar bail consideration?

MR. CURRAN: Objection, your Honor, to the form of that question.

MR. ROSENBERG: Your Honor, you just indicated that he can answer.

THE COURT: Go ahead.

Q Do you, sir?

A What was that? Will you repeat that, please.

THE COURT: Mr. Reporter, repeat the question.

(Question read.)

A I wouldn't know, counselor. I am not a lawyer or a bondsman.

Q You have been locked up several times for narcotics, is that correct?

A Yes, sir.

Q On your first occasion how much was your bail?

A I don't recall. That's a long time ago.

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Q How about your second occasion?

A If I remember correctly, it was 25,000.

Q 25,000 on the second occasion?

A Yes.

Q How about the third occasion?

A Of narcotics?

Q Yes.

A The third occasion would be now, the incident we are talking about now.

Q So the time before this you were held on \$25,000 bail, is that correct?

A Yes, sir.

Q And how, the time after, when you were told you were facing a life term, you are being held on \$1000 bail, and you say that you don't know whether or not this is consideration?

MR. CURRAN: Objection.

THE COURT: That is argumentative.
You can argue it to the jury.

MR. ROSENBERG: All right.

Q - Sir, did you have a lawyer at the time you went in and pled not guilty?

A Not one of my own, no.

Q Legal Aid?

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A No.

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Q Frank Rogers?

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A No.

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Q Who represented you, who entered the plea of

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not guilty for you, sir?

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A It was a Mr. Stone, who was representing Sal

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Landi on the case.

9

Q In other words, an attorney representing a

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co-defendant entered a plea for you, is that correct?

11

A Yes, sir.

12

Q And he was handed an indictment, is that right?

13

A That I don't know. I never received it?

14

Q Did you ever discuss with Mr. Landi or any other

15

attorney what you were indicted for?

16

THE COURT: Hold on.

17

MR. CURRAN: Objection.

18

THE COURT: Mr. Stone.

19

MR. ROSENBERG: I am sorry, your Honor.

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Q Did you ever discuss with that attorney or any other attorney just what it is you are charged with, whether you are charged with a Class A felony, a Class B, a Class C, a Class D or a Class E?

A No, I did not.

Q You weren't even curious as to whether you are facing life, 25 years, 15 years or four years, you are not even curious, sir?

A I was waiting for him, when he would tell me.

Q Waiting for who, for Mr. Rogers to tell you?

A No, Mr. Stone.

Q And to this date he never told you, you never even bothered asking him?

A Well, I haven't seen him in quite a while, counsellor.

Q But you never asked anybody, is that right, "What am I facing on this indictment," is that right?

A You mean anybody at all?

Q All right. We will start with any lawyer. Did you ask any lawyer either from the District Attorney's office, the government, the state, "What am I facing on this charge?

A No, sir.

Q You did not. You say you did not receive

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consideration for your testimony, sir. Were you indicted
in this case, in this conspiracy? Are you indicted in
this case?

A Yes, I was.

Q Did the government tell you what is going to
happen with that case? Withdrawn.

What did happen to your indictment with respect
to that case?

A The indictment was a -- it wasn't really an
indictment. It was a cover-up to try to keep me under
cover.

Q In other words, you are not really charged
with a crime in the federal court, is that correct?

A That's correct.

Q Do you consider that consideration for your
testimony, sir?

A I imagine so.

Q How long have you been on the government's
payroll?

MR. CURRAN: Objection to the form of that,
your Honor.

MR. ROSENBERG: All right. I withdraw the
question.

Q You left Frank Rogers' office in 1972, is that

1
2 correct?

3 A Yes, sir.

4 Q November of '72?

5 A Yes, sir.

6 Q You weren't then charged with a crime, is that
7 correct? In other words, you weren't brought into court
8 the following day after you were arrested?

9 A No, sir.

10 Q You were not?

11 A No.

12 Q You were permitted to go out into the street,
13 is that correct?

14 A Yes.

15 Q Without bail or anything else, is that correct?

16 A I stated, counsellor, I had a bail.

17 Q I am sorry, sir. I didn't hear you.

18 A I had a bail.

19 Q In November of '72?

20 A Yes.

21 Q You were brought into criminal court and
22 arraigned?

23 A Are you speaking about the first time I was
24 taken in?

25 A Yes, by Frank Rogers. You said it was November

of '72.

A Oh. All right.

Q You had a conversation with Frank Rogers and then he permitted you to go home, is that right?

A That's right.

Q You weren't arraigned the following morning and held in bail, is that right?

A That's right.

Q It was the following year, after you spoke with Frank Rogers, after you cooperated with Frank Rogers, after you cooperated with the government, that you were brought back and held on a thousand dollar bail, am I correct, sir?

A Well, I was picked up, yes.

Q How long have you been in protective custody, sir?

A Since the month of October.

Q Until today?

A Yes, sir.

Q Is that correct?

A Yes.

Q Has the government paid you any money with respect to from October on?

A You mean cash money?

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2 Q Yes.

3 A Well, I told you, counsellor, I am in protective
4 custody.

5 Q And I asked you whether or not the government
6 has given you any money while you were in protective
7 custody.

8 A I am sustained by the marshals, yes, sir.

9 Q Do you ever get any cash in your hand, sir?

10 A Yes, sir.

11 Q That is what I am asking you. How much cash?

12 A I get 400 a month.

13 Q 400 a month?

14 A Yes.

15 Q How about rent? Do you pay rent any place?

16 A No.

17 Q How about breakfast, lunch and dinner?

18 A It comes out of the 400.

19 Q When you dine with the marshals you pay for
20 your own dinner, is that what you are telling us?

21 A I pay for my own dinner, yes. I have my wife
22 with me, incidentally. That's for the two of us.

23 Q Do you consider that consideration for your
24 testimony, sir, the \$400 a month?

25 MR. CURRAN: Objection, your Honor.

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THE COURT: Sustained.

Q Has anybody indicated to you, outside of what is going to happen with your case in the state court, how much more additional moneys you are going to get?

MR. CURRAN: Objection, your Honor.

MR. ROSENBERG: Your Honor, I respectfully --

MR. CURRAN: I object to the form of the question.

THE COURT: Read the question.

(Question read.)

MR. CURRAN: The point is, your Honor, it assumes facts not in evidence.

THE COURT: Yes.

MR. ROSENBERG: All right. I will rephrase it then.

Q Did anybody tell you that after you get through testifying you are going to get a sum of money?

A No, sir.

Q Did anybody infer to you or imply to you that there will be something in your future with respect to money?

A No, sir.

Q Were you told by anybody that after you testified you would be permitted to leave the state, you would

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2 get a new identity, "We'll set you up," anything like that,
3 by anybody, Mr. Rogers, his assistants, Mr. Curran, Mr.
4 Phillips, anybody?

5 A Well, a Lieutenant Whelan mentioned something
6 like that one time.

7 Q What did Lieutenant Whelan tell you?

8 A He said that I wouldn't go to jail, I could go
9 anywhere I want.

10 Q He said you won't go to jail?

11 A Yes.

12 Q You don't consider that to be consideration, sir,
13 for your testimony, the fact that you won't go to jail on
14 a life count?

15 MR. CURRAN: Object to that, your Honor.
16 There is no life count. There is no such testimony.

17 MR. ROSENBERG: I believe, if your Honor please,
18 that there was testimony that when he was arrested he
19 was facing a life count.

20 MR. CURRAN: No, I object to that, your Honor.
21 The testimony --

22 MR. ROSENBERG: I am sorry. It was 50 to life.

23 MR. CURRAN: There was testimony about a con-
24 versation with Mr. Rogers.

25 THE COURT: I was here.

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2 MR. ROSENBERG: Can I get an answer to whether
3 or, not he considers it to be consideration for his testi-
4 mony, Judge?

5 THE COURT: Yes, but don't pack everything into
6 one question, though. It sounds like a speech.

7 The question you want to ask is do you consider
8 your not going to jail to be consideration?

9 Answer it.

10 Q You were told you weren't going to jail by the
11 authorities, is that right?

12 THE COURT: Did he answer it?

13 MR. ROSENBERG: No, your Honor. He was hesitat-
14 ing. I was trying to bring him up to answer the Court's
15 question.

16 THE COURT: All right. Hold off.

17 A You didn't let me finish what I started to say,
18 counsellor. When Lieutenant Whelan told me --

19 Q Just a moment. Answer the Court's question.

20 MR. CURRAN: Your Honor, might we have the
21 question now given to the witness?

22 THE COURT: Sure.

23 MR. CURRAN: I have forgotten it.

24 (Record read.)

25 A No, because I didn't believe it when he said it

to me.

Q Do you believe it now?

A No.

Q You still feel you are going to jail?

A According to what he told me?

Q No. What do you feel right now? Do you feel you are going to jail right now, sir?

A Mr. Phillips told me at one time --

Q Can I get an answer? Do you feel that you are going to jail is what I want to know.

A I don't know.

Q You don't know?

A No.

Q How about when Whelan said you are going to leave the state, you are going to get a new identity, "We are going to give you money," did you still feel that you were going to go to jail?

A Mr. Whelan is not a judge, counsellor.

Q I didn't ask you that. I asked you whether or not based upon what he told you you felt that you were going to go to jail.

THE COURT: I think he already answered that.

A I answered that, counsellor.

MR. ROSENBERG: Your Honor, can we have a recess

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2 at this time? It's 4.30. I haven't begun yet, Judge.
3 I am going to be a while.

4 MR. CURRAN: Your Honor, may we approach the
5 bench?

6 THE COURT: On this question?

7 MR. CURRAN: Yes, sir.

8 THE COURT: No.

9 Will the marshall take the jury out, please.
10 Everybody else remain seated.

11 (Jury left the courtroom.)

12 (Witness left the courtroom.)

13 THE COURT: Mr. Curran, would you be good enough
14 to make copies of the transcript which you were handed at
15 the break. You were given a transcript by Mr. Lopez,
16 I believe.

17 MR. CURRAN: I was not, your Honor.

18 MR. LOPEZ: I have it here to give it to him.

19 THE COURT: Go over and give it to him.

20 Who is in charge of copying, Mr. Fortuin?
21 Mr. Fortuin, would you make the copies.

22 I want everybody back here Monday morning at
23 a quarter to 10.

24 MR. PHILLIPS: Your Honor, we have an applica-
25 tion, the government does.

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THE COURT: You know, I was sitting here waiting to hear who was going to be the first person to make an application. Go ahead. What is your application?

MR. PHILLIPS: Your Honor, the government's application relates to the Court directing Mr. Inglese to give handprinted exemplars. We mentioned this to you yesterday. This was the area of law that the government's application was going to be based on. Mrs. Rosner has also been made aware that the government was going to make this application.

We are prepared to argue it if your Honor wants to hear any argument. Our application is based on United States vs. Gilbert in the Supreme Court.

THE COURT: And an opinion written by Judge Cooper, right?

MR. PHILLIPS: Yes.

THE COURT: Do you have any authority?

MRS. ROSNER: I certainly do.

THE COURT: All right. Give me the authority, just the cases.

MRS. ROSNER: Your Honor, without a factual predicate the cases would be meaningless.

The government is seeking to compare Mr. Inglese' handwriting to another piece of handwriting which it came

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into the possession of during late June and early July of 1973. At that time Mr. Inglese was under indictment in the predecessor to this superseding indictment. He was indicted during the April round-up, approximately April 16, 1973, on the predecessor to this narcotics case.

In June Mr. Inglese had conversation with undercover agents of the federal government and it was during this period of time that the handwriting specimen which the government is seeking to compare Mr. Inglese's handwriting to came into existence.

It is our position that since he was then under indictment in this very case the handwriting which the government is seeking to compare his exemplars to was obtained in violation of United States vs. Massiah, so that the original handwriting specimen is inadmissible under Massiah and similarly the efforts to compel him to produce handwriting exemplars today are the fruits of the poisonous tree of that Massiah violation, your Honor.

Now, I am sure Mr. Phillips will amplify the factual statement which I have begun. The period of time June, 1973, in which this handwriting came into existence eventually developed into the bribery case in which Mr. Inglese stands convicted and has been sentenced to 15 years.

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2 The law is, your Honor, as I understand it,
3 that when there is a violation of the Massiah rule by
4 dealing with an indicted individual other than through
5 his lawyer if a separate crime is committed apart from
6 the crime for which he stands indicted, Massiah does not
7 prevent the prosecution of the acts committed during the
8 time he is under indictment, but Massiah prohibits the
9 introduction of evidence for the crime for which he
10 stands indicted when the government deals with him other
11 than through his counsel, and that, your Honor, though
12 the road be long, is the straight and direct route for
13 what the government is seeking to do here.

14 I would suggest, your Honor, if you look at
15 United States v. Massiah, I am sure the government will
16 concur in the factual presentation that I have given you.
17 What they are seeking to do here is completely unlawful
18 and the evidence would be inadmissible as the fruit of the
19 poisonous tree.

20 THE COURT: That doesn't stop them from getting
21 a handwriting exemplar.

22 MR. PHILLIPS: Your Honor, may I just respond
23 briefly.

24 Massiah stands for the proposition that a
25 defendant may not be talked to while under indictment

1 without the presence of his counsel by a government agent
2 and if he is he is deprived of his Sixth Amendment right
3 to counsel, but Massiah does not give a defendant immunity
4 from committing other crimes.
5

6 What was involved here was that Mr. Inglese and
7 others were in the process of bribing two officers of the
8 Police Department who were acting on behalf of the United
9 States Government, specifically, Stephan Delcorso and
10 William Erwin, for twl reasons: one, to destroy evidence
11 in the Zanfordino case, and secondly, to find the where-
12 abouts of a witness in the Zanfordino case in order that
13 she may be killed. That is what Mr. Inglese was con-
14 victed of.

15 It seems to me that it's almost humorous to
16 think that the government is expected to go through Mr.
17 Inglese's counsel once they find evidence that Mr.
18 Inglese wants to bribe these officers for these reasons.
19 But as your Honor just pointed out, that is really ir-
20 relevant to the question of whether or not Inglese should
21 be compelled to give handprinted exemplars at this point.

22 MRS. ROSNER: Your Honor, if I may respond,
23 I think Mr. Phillips' answer shows him to be in agreement
24 with my analysis of the law, because in fact Inglese had
25 been prosecuted for the bribery which was committed during

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2 that period of time.

3 What Massiah bars is admission in evidence in
4 the crime for which the individual is under indictment
5 of the fruit of the Sixth Amendment violation.

6 I want to make it very clear, your Honor,
7 that we are not relying on a Fifth Amendment right,
8 a testimonial right to refuse to give such exemplars,
9 or a Fourth Amendment reasonableness claim. We are
10 relying on the Sixth Amendment violation of the right to
11 counsel, which is not overcome by anything Mr. Phillips
12 has said.

13 THE COURT: All right.

14 MR. CURRAN: Your Honor, I just wonder if I may
15 hand up to the Court an exhibit. Exhibit 3548-A for
16 identification, a government exhibit, as your Honor may
17 recall, consists of the entire state court grand jury
18 testimony of the witness Barnaba. Defense counsel have
19 received pages 30 through 40 of this exhibit and 30 through
20 40 are marked as 3548.

21 I would like 3548-A for identification, your
22 Honor, to be sealed by the Court if the Court agrees with
23 the government that the other material shouldn't be turned
24 over.

25 THE COURT: Let me read it.

MR. CURRAN: I hand it up to the Court.

THE COURT: All right. Mr. Siegel, you have been very quiet.

MR. SIEGEL: Your Honor, I have two questions. One would be on behalf of the defendants in this case to make an inquiry of the government so we can obtain copies of the transcript prior to Monday. That's my first question. My second request is --

THE COURT: That is something you can work out with the prosecutors.

MR. SIEGEL: Second, I would like a representation from the government, if any promise had been made to Mr. Barnaba for his testimony in this case.

THE COURT: Do you want to make a representation?

MR. CURRAN: I think Mr. Rosenberg is examining in this area and other defense counsel can do likewise.

MR. ELLIS: Your Honor, I would ask the government produce copies for all outstanding indictments or charges against Barnaba.

THE COURT: Is that what you want? This is the kind of thing you can work out with the government directly.

MR. ELLIS: Since cross will proceed Monday morning, I would rather not leave it today.

THE COURT: Do you have copies of the indict-

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2 ment?

3 MR. CURRAN: I suppose I can find copies of the
4 superseded indictment in this case. I am sure counsel have
5 copies. If the reference is to the State Court indictment,
6 we can get a copy and Xerox it. I assume defense counsel,
7 some of them have documents as well, but we will make that
8 available.

9 THE COURT: Do you have that, Mr. Rosenberg?

10 MR. ROSENBERG: No, I don't.

11 THE COURT: All right, I will see you Monday
12 morning.

13 (Adjourned to February 11, 1974, at 10.00 a.m.)
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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
John Barnaba (Resumed)	1296 1414	1474		
Martin O'Boyle	1383	1393		

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
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62	1468	1469
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Court

56	1409	
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